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# IMPERIAL AGRICULTURAL CORP.

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany S. Res. 252]

The Committee on the Judiciary, to which was referred the bill (H. R. 5285) for the relief of the Imperial Agricultural Corp., having considered the same, reports favorably an original resolution (S. Res. 252) referring the bill to the United States Court of Claims pursuant to the provisions of sections 1492 and 2509 of title 28, United States Code, and recommends that the resolution be agreed to.

### PURPOSE

The purpose of the proposed resolution is to refer the bill (H. R. 5285) for the relief of the Imperial Agricultural Corp., to the Court of Claims, under the applicable provisions of title 28 of the United States Code, for a further report to the Senate, giving such findings of fact and conclusions thereon as shall be sufficient to inform the Congress of the nature and character of the demand, as a claim, legal or equitable, against the United States. The claim involves approximately $68,000.

### STATEMENT

The Imperial Agricultural Corp. entered into a contract with the Commodity Credit Corporation in 1951 to produce kenaf seed for the Commodity Credit Corporation. This contract provided, in part, that the corporation would purchase the kenaf seed for planting from the Commodity Credit Corporation. This contract stipulated the minimum quality of the seed as to purity, germination, and moisture.

Apparently there was no other source of seed available to the corporation.

Before entering into this contract with the Commodity Credit Corporation, the corporation determined by discussions with various experts of the United States Department of Agriculture and the Belle Glade Experiment Station in Florida that, insofar as these officials knew, kenaf is subject to no disease or inspect pests, except nematode.

Furthermore, official publications of the United States Department of Agriculture stated that a minimum expected yield of kenaf seed is 300 pounds per acre.

The Imperial Agricultural Corp. prepared and fertilized the land in accordance with advice given by the experts of the United States Department of Agriculture and Belle Glade Experiment Station. The soil from each field was analyzed and the fertilizer requirements worked out in cooperation with the experts of the United States Department of Agriculture and Belle Glade Experiment Station.

The seed purchased from the Commodity Credit Corporation contained sufficient foreign matter that the Imperial Agricultural Corp. was forced to have all the seed it received from the Commodity Credit Corporation recleaned before it would pass through a grain drill uniformly. As an added precaution, all seed planted by the corporation was treated with arasan to eliminate the danger of infection from any disease carried on the outside of the seed. The seed was treated by the Turner Supply Co. in Fort Lauderdale and Arrow Farm, Indiantown.

The seed was planted in accordance with recommendations of the experts of the United States Department of Agriculture and Belle Glade Experiment Station.

When the plants were some 3 feet high, some nematode damage appeared. A little later army worm and other insects began to damage the plants. The corporation dusted the infected areas, with very satisfactory results.

Later, various fungi appeared. These were dusted with quite satisfactory results.

As the seed pods began to form, it was observed that many of the plants were dying and it was found that the seeds in the pods were decaying from within.

Specimens of infected plants and seed pods were taken to Belle Glade Experiment Station by representatives of the corporation and by County Agricultural Agent Johnson, of Martin County, Fla. The corporation was not advised by the Belle Glade Experiment Station of any measures that might be taken to stop the progress of this disease or virus. Specimens of infected plants and seed pods were taken, also, to Mr. Charles Ingram, Cotton Branch, United States Department of Agriculture, PMA, in Washington, D. C. Mr. Ingram sent these specimens to the Beltsville Research Institute in Beltsville, Md. The corporation was advised by the Beltsville Research Institute that they were able to identify some fine fungi on these specimens, but were unable to identify the cause of the seed decaying in the pods and, therefore, unable to advise any treatment.

This unidentified disease or virus developed very rapidly throughout the entire planting of kenaf in Florida, and in the most promising fields it destroyed a large percentage of the stalks and a large percentage of seed on the remaining stalks.

An examination of one of the fields was conducted by one of the corporation's employees accompanied by Mr. Strickland, of the Production and Marketing Administration office in Palm Beach, and at that time it was estimated that only about 25 percent of the stalks had any seed pods and only about 25 percent of the seed pods had any live seed in them.

At the time, the corporation's representatives advised Mr. Strickland that they believed that the disease was seedborne, and that they contemplated asking for relief from the Commodity Credit Corporation. They further advised him that they did not believe the remaining seed would pay the cost of harvest and asked that the corporation be permitted to abandon some 191 acres of the planting. This permission was subsequently granted.

Representatives of the United States Department of Agriculture and Belle Glade Experiment Station visited plantings of the corporation at various times during the growing and harvesting seasons, both at the request of the corporation and on their own initiative, and at no time did they advise any of the corporation's representatives that they found the corporation negligent in any respect.

The corporation's representatives state that from all information obtained by their personnel they are satisfied that the disease or virus which caused the substantial failure of their crop was prevalent in all plantings in Florida made with seed furnished by the Commodity Credit Corporation. They state that further information has come to them that similar failures occurred in Cuba in plantings made with seed furnished by the Commodity Credit Corporation, and that they have been advised that no trace of the disease or virus was found in plantings of about 10 acres by the Belle Glade Experiment Station made with seed obtained from another source.

In view of the sharp disparity between the claimant and the Department of Agriculture as demonstrated by the correspondence appended below, the committee is of the opinion that this dispute should be determined on either a legal or equitable basis after a full and complete hearing in the United States Court of Claims.

Attached hereto and made a part hereof is evidentiary data in connection with this legislation.

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## Memorandum in Support of Claim of Imperial Agricultural Corp. Against Commodity Credit Corporation

### INTRODUCTION

This is a memorandum in support of a claim against Commodity Credit Corporation (hereinafter called "CCC") for reimbursement for costs incurred by Imperial Agricultural Corp. (hereinafter called "Imperial") in growing, harvesting, and delivering the 1951 kenaf seed crop pursuant to an agreement dated July 6, 1951, a copy of which, as amended, is attached hereto as exhibit A.

This claim is made because the aforesaid 1951 kenaf seed crop was a failure due to the fact that the seed furnished to Imperial by CCC was diseased and totally unfit to produce the crop intended by the parties to said agreement.

Total costs incurred by Imperial in growing, harvesting, and delivering, in part, the 1951 kenaf seed crop came to $95,394.98. A letter of demand written by Imperial to CCC, dated April 2, 1952; the invoice accompanying said letter; and a schedule itimizing the aforesaid total costs are attached hereto and marked, respectively, exhibits B, C, and D. They show a credit to CCC for $27,681.38 paid by it to Imperial on invoices covering poundages of seed delivered, thus making the net amount demanded by and due to Imperial $67,713.60.

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CCC, by letter dated May 29, 1952, signed by its president, G. F. Geissler rejected said claim. A copy of this letter is attached as exhibit E.

STATEMENT OF FACTS

In April 1951, the Defense Mobilization Administration asked the United States Department of Agriculture to make preparations to produce kenaf, a substitute for jute, in the Western Hemisphere. As a result, the Department of Agriculture, through the Commodity Credit Corporation, issued the following notice on June 25, 1951:

"DEPARTMENT OF AGRICULTURE

"COMMODITY CREDIT CORPORATION

"KENAF PROGRAM

"*Notice of 1951 Crop Planting*

"Notice is hereby given that the Commodity Credit Corporation will undertake a program to encourage the planting of kenaf in the United States, in 1951 under which the Corporation will sell kenaf seed which it is able to obtain for planting in those portions of the United States to which it is adaptable and purchase the kenaf seed and fiber produced from such plantings. The purpose of the program is to place the United States in a position to expand the production of kenaf fiber, a jute substitute, to meet essential civilian and defense needs, should such action become necessary. The program requires the negotiation of a contract prior to planting, and the acreage to be contracted is limited. Information regarding the program is available from the Cotton Branch, Production and Marketing Administration, United States Department of Agriculture, Washington 25, D. C.

"Issued this 25th day of June 1951.

"[SEAL]

"JOHN H. DEAN,
"*Acting Vice President, Commodity Credit Corporation.*

"Approved:
"G. F. GEISSLER,
"*President, Commodity Credit Corporation.*

"[F. R. Doc. 51-7425; Filed, June 27, 1951; 8:56 a. m.]"

Thereafter, Imperial was contacted by the Department and entered into negotiation of the agreement of July 6, 1951, mentioned above. Official publications, prepared by the Department of Agriculture, were supplied to Imperial and scientists employed by the Department discussed the program with its representatives.

The publications in question indicated that an acre of kenaf should yield a minimum of 300 pounds of seed per acre. Thus in a report entitled "The Culture and Processing of Kenaf, a Superior Substitute for Jute, in Florida," it is said (p. 4):

"Yields of [seed] from 250 to 500 pounds per acre are quite common with a normal expectancy of 300 pounds."

This report, whose author is Dr. Allison of the State-Federal Research Station at Belle Glade, Fla., concluded that there was no doubt as to the practicality of growing kenaf either for fiber production or seed production in Florida.

Dr. Allison, as one of the aforesaid scientists affiliated with the Government, advised Imperial that he knew of no difficulties involved in the growth of kenaf with the possible exception of nematodes. Imperial was aware of the possibility of nematodes in the soil and before planting took the necessary precautions to select acreage which was free from the presence of nematodes and no difficulty was experienced in that respect. Dr. Allison's opinion was the one given generally by Government scientists to Imperial prior to the latter's entry into the agreement of July 6, 1951.

This agreement provided in substance for the sale by CCC to Imperial of 9,126 pounds, net weight, of kenaf seed at 98.05 cents per pound. Section 1 (b) of the agreement provided that the seed to be sold had been purchased for sale by CCC on the representation that it was of a germination not less than 70 percent, purity not less than 97 percent, and moisture content not in excess of 10 percent. The seed purchased by Imperial was to be used to plant approximately 450 acres of land in Florida for the production of kenaf seed, such planting to be done in the 1951 crop year. It was agreed that CCC should purchase from Imperial the entire quantity of the seed produced up to a maximum of 135,000

pounds, the said seed to have essentially the same germination, purity, and moisture content as specified above and to be paid for by CCC at the rate of 75 cents per pound.

Imperial planted approximately 425 acres pursuant to its agreement with CCC, and in the selection of the acreage, the details of planting the seed, and the cultivation of the ensuing crop, it was constantly and consistently advised and guided by scientific employees of the Federal Government. In this regard, CCC had reserved for itself under the terms of the agreement of July 6, 1951, extensive privileges of inspection, including inspection of the lands on which the seed was planted, the methods of cultivation, harvesting, and preparing the crop for delivery, and the records and reports maintained by Imperial in regard to the operation.

In planting the aforesaid 425 acres on land rented in conformity with the advice of Government experts, Imperial employed the best known cultural practices and followed equally correct practices during the growth of the crop. Army worm, other insects, downy mildew, and other fungus appeared, but the crop was dusted with satisfactory results. Nematodes appeared in certain spots but not to any serious extent.

Thereafter appeared a disease of a virus-like complex which caused a tip-blight which, in its most severe form, extended into the seeding section of the top of the plant where it allowed but few seeds to mature.

As a result only a nominal amount of seed was produced. Diseased plants were taken by Imperial to the State-Federal Research Station at Belle Glade, Fla., and to the Federal Research Center at Beltsville, Md. Neither agency was able to prescribe for the correction of the condition. Imperial, through its representatives in charge of its participation in the kenaf program, informed CCC of this disesse and its result and expressed reluctance to deliver seed which was harvested and which Imperial felt bore the aforesaid disease. As a result of an exchange of correspondence there was delivered to CCC the seed harvested from approximately one-half of the acreage planted by Imperial and permission was granted by CCC to Imperial to abandon the harvesting of the balance of the acreage. Such seed as was delivered was paid for by CCC and the payment therefor credited to it by Imperial on the invoice referred to above and attached hereto as exhibit C.

CCC by its letter of May 29, 1952, attached hereto as exhibit E, rejected the claim of Imperial on the principal ground that section 1 (b) of the agreement between it and Imperial provides as follows:

"The kenaf seed purchased by contractor shall be delivered f. o. b. warehouseman's loading platform at warehouses designated by CCC in the State of Florida. Such seed has been purchased by CCC on the representation that it is of a germination not less than 70 percent, purity not less than 97 percent, and moisture content not in excess of 16 percent. Contractor may, at his expense, cause such seed to be tested prior to removal from the warehouse and may reject such seed if it is not of the quality stated above. CCC shall not be liable for the quality of such seed except to the extent and in the manner herein stated."

The seed sold by CCC to Imperial was purchased by the former in Cuba where planting of kenaf for both seed and fiber production had been conducted under Federal Government auspices for some years. The disease which attacked and destroyed Imperial's crop had been known in Cuba and had been brought to the attention of the Government at least as early as August 1950. Attached hereto is exhibit F, an article dealing with the disease, its history and attributes, entitled "Report on Apparent Virus Tip-Streak of Kenaf in Cuba," written by Frederick L. Wellman, chief agriculturist and field consultant in pathology of the Office of Foreign Agricultural Relations of the United States Government. In this report, Mr. Wellman gives support to Imperial's claim that the disease in question is seed-borne and, further, that it may be of a virus nature.

ARGUMENT

If there was ever a case in which fundamental principles of justice and equity dictated recovery, this is it. Imperial, which had no previous experience in planting and growing kenaf for seed or fiber, was contacted by CCC in connection with the latter's kenaf planting program and induced to participate in it. The purpose of the program—i. e., to meet essential civilian and defense needs—naturally strengthened its appeal to Imperial. Moreover, in the negotiations leading up to the agreement of July 6, 1951, CCC consistently and constantly represented to Imperial in conferences and by numerous oral and written communications that this program was feasible and would result in at least a nominal profit. There

was never the slightest mention or intimation by CCC of the disease which ultimately destroyed Imperial's crop. Before and after the signing of the agreement of July 6, 1951, CCC and its Government experts and scientists followed a course of conduct of advising and guiding Imperial at every step of the way. This advice and guidance included selection of acreage for planting the kenaf seed sold by CCC to Imperial, the details of planting such seed, and the cultivation of the ensuing crop. CCC had insured its right to so conduct itself by the very terms of the agreement of July 6, 1951, which reserved to it extensive rights and privileges of inspection and supervision.

It was only natural that Imperial should and, in fact, did rely to the utmost on the representations made by CCC prior to the execution of the subject agreement and on its advice and guidance thereafter. In view of all the facts, it is difficult if not impossible to imagine where reliance would be more justifiable.

Yet, despite all this and despite the further fact that Imperial seeks only to recover its actual out-of-pocket expenses lost by its participation in CCC's program, its claim for such reimbursement has been rejected preemptorily by CCC which now seeks to protect itself against liability by invoking formal, general language of disclaimer appearing in the agreement of July 6, 1951. Such a result is both unjust and inequitable, and most certainly is not worthy of this Government or any of its agencies. Surely it can do the defense program no good if it be known that reliance on the Government before and during participation therein can but lead to unrecompensed loss. And in any event, CCC, as an agency of this Government, should not lend itself to the perpetration of such a blatant injustice.

But Imperial is not relegated to the good conscience of CCC as its only hope for recovery. The courts have refused to allow the result contended for by CCC by holding that to allow a seller to so induce a buyer to rely and then to escape liability for such reliance is to countenance a result that constitutes unfair dealing and which is contrary to natural justice and good morals.

In *Morris Run Coal Co., Inc.* v. *Carthage Sulphite Pulp & Paper Co.* (210 App. Div. 678, aff'd 242 N. Y. 567), a seller who knew from prior dealing what the buyer's needs were, stated that it had located some coal screenings of "good" quality and asked for instructions to go ahead. The buyer wired "enter order 10 cars screenings as quoted" and confirmed by letter. The seller acknowledged receipt of the order and stated "formal acknowledgements will be sent you." One of the conditions of the formal acknowledgement was that the coal was being sold "as is," which language of disclaimer is as general as possible.

In reversing a judgment in favor of the seller the court held that the question whether there was a breach of warranty as to the quality of the coal screenings should have been submitted to the jury. It said (pp. 680-681):

"Even though the screenings were bought 'as is' still there was a representation that they were 'good' screenings. They were known to be purchased for use in the defendant's furnaces and the representation that they were 'good' together with their sale for a known use, was a warranty that they were usable for the purposes for which they were sold. * * * The jury should have been allowed to pass on the question of the alleged breach of warranty."

This refusal to allow a result that constitutes unfair dealing and which is contrary to natural justice and good morals is again evident in the language of the leading case of *Lumbrazo* v. *Woodruff* (256 N. Y. 92), a case which at first glance might be considered authority against Imperial's claim herein.

In the Lumbrazo case there was involved the sale of Japanese onion seed sets whose greatest value was their productivity. The purchaser of such seeds sought to recover for breach of warranty on the theory that the seller had furnished seed sets of an inferior grade or quality with a resulting small crop. The warranty involved in the Lumbrazo case was an implied one as to productiveness. The disclaimer clause in the contract between the parties read as follows (p. 97):

"We give no warranty expressed or implied as to description, quality, *productiveness*, or any other matter, of any seeds sent out, and *will be in no way responsible for the crop.*" [Emphasis supplied.]

In finding for the seller what the court actually held was that such a disclaimer which specifically refused to accept responsibility for productiveness of seeds was effective to exclude an implied warranty as to productiveness. But it went on to say (p. 97):

"Neither party was obliged to enter into this contract, and there is no public policy which prevents adult persons of sound mind making such agreements as they please, not prohibited by statute, *or contrary to natural justice* and good morals." [Emphasis supplied.]

In *Linn* v. *Radio Center Delicatessen, Inc.* (169 Misc. 879), plaintiff brought an action against a delicatessen for personal injuries sustained in biting on a tack found in a piece of pastry purchased from the defendant delicatessen. The supplier of the pastry was impleaded as a third party defendant. The only question was whether a general disclaimer of warranty prevented the impleaded defendant from being liable to the defendant delicatessen. The court in granting judgment against the impleaded defendant quoted the language from the Lumbrazo case set forth supra and said (p. 880):

"The disclaimer or waiver is sufficient to bar action as against the impleaded defendant *unless it is contrary to natural justice and good morals* * * *." [Emphasis supplied.]

It held that it was so contrary.

The courts have also refused to allow a disclaimer of warranty to achieve what is an unjust and inequitable result by employing a more legalistic argument founded in the doctrine of failure of consideration.

In the recent case of *Myers* v. *Land* (235 S. W. 2d 988, Ct. of App. Ky., 1950), a suit was brought by a purchaser to recover the purchase price of a machine to manufacture concrete blocks on the ground that the seller had misrepresented the machine and its ability to do what it was designed to do, viz, to manufacture merchantable concrete blocks. The contract under which the machine was purchased contained the following provision:

"There are no understandings, agreements, representations, or warranties expressed or implied, not specified herein respecting this order. The warranties, provisions, terms, and conditions on the reverse side hereof are expressly made a part of this agreement."

The provisions on the back of the agreement were special warranties limiting the seller's liability to defects in material and workmanship which might develop under normal use and service. The obligation of the seller was limited to making good at its factory all defective parts. The seller relied upon this disclaimer of warranty.

The court, after citing and quoting section 15 of the Uniform Sales Act (which provides for an implied warranty of fitness for a particular purpose, where a buyer makes known to the seller the particular purpose for which the goods purchased are required and it appears that he relies on the seller's skill or judgment) and section 71 of said act (which provides that where any right or liability would arise under a contract of sale by implication of law "it may be negatived or varied by express agreement") went on to say (p. 990):

"Anyone brought up to believe that for every wrong there is a remedy will pause before saying that the seller will escape all liability by merely putting in an order blank a statement to the effect that there is no assurance that the buyer will get a machine that will work. We have paused for the moment and have readily concluded that the avoidance of liability under such a circumstance is not permitted by the law. Otherwise, one would have no recourse where he got an automobile without a motor or wheels. * * *

"Where there is a complete failure of a machine to accomplish the purpose for which it was designed, that is to manufacture a merchantable product, it is much more than the breach of an implied warranty of suitability or fitness for a particular purpose. It is not a merchantable article if it will not do what it was intended to do. There has been no delivery of that which was bought. * * *

" * * * Likewise, to sell a man a machine for manufacturing a merchantable product that will not accomplish that purpose at all is a breach of the contract itself rather than a mere breach of warranty, although were such implication of law not excluded, that too would sustain a right of action. *If the machine is worthless for the purpose for which it was sold, there is a failure of consideration.*" [Emphasis supplied.]

In *Rocky Mountain Seed Co.* v. *Knorr* (92 Colo. 320, 20 P. 2d 304), plaintiff sought to recover a balance of an open account for seed sold to defendant. The defendant interposed a counterclaim stating that the seed purchased was not alfalfa seed as bargained for but sweet clover. Plaintiff had printed the following disclaimer on its invoices, packages, and tags (p. 305):

"We give no warranty, express or implied, as to description, quantity, productiveness, or any other matter of any seeds, bulbs or plants we send out, and will not be in any way responsible for the crop * * *."

Speaking of plaintiff's argument that this disclaimer of warranty clause exempted it from liability, the court said (20 P. 2d 305):

"On the record we doubt the soundness of that doctrine. It will be observed that defendant's contention is not that the delivery was short in quantity, or

was lacking in productiveness, or was an inferior kind of alfalfa, or that the crop failed, but rather that on a purchase of alfalfa seed plaintiff made delivery of sweet clover seed. In the circumstances defendant's cause of action is grounded, not on breach of plaintiff's warranty, but for breach of contract to deliver what was purchased. And that is the distinction which the authorities recognize."

The Supreme Court of Minnesota reached the same result in *Mallery* v. *Northfield Seed Co.* (196 Minn. 129, 264 N. W. 573), where a vendee claimed that a vendor had sold him mixed alfalfa and clover seed instead of pure alfalfa seed. In Minnesota, by statute, a vendor of seed had to set forth the purity and germination percentages thereof. The vendor had done so on tags attached to the bags containing the seed and the tags indicated that the seed was pure alfalfa. Said the court (264 N. W. 574):

"* * * we are satisfied that defendant, after giving the purity and germination percentages of the seed, in compliance with the statute, could not evade the effect thereof, or the warranty thereby made, by thereof annexing a subsequent condition that it gave no express or implied warranty."

And, see *Wapato Fruit & Cold Storage Co.* v. *Denham* (126 Wash. 676, 219 P. 30).

The Supreme Court of North Carolina has held throughout the years that a disclaimer of warranty such as is present in the instant case amounts to a refusal to warrant against worthlessness and that when the commodity sold is proved to be worthless and utterly unfit for use, such a refusal to warrant against worthlessness falls with the balance of the supposed contract for want of consideration (*Poole* v. *Pinehurst*, 215 N. C. 667, 2 S. E. 2d 871; *Swift & Co.* v. *Aydlett*, 192 N. C. 330, 135 S. E. 141; *McCaskey Register Co.* v. *W. J. Bradshaw & Co.*, 174 N. C. 414, 93 S. E. 898).

Metaphorically speaking, this is certainly the case where an automobile dealer sold an automobile without a motor for here there was sold a similarly worthless thing, unfit for the particular purpose for which it was intended. The entire purpose of the sale of kenaf seed by CCC to Imperial pursuant to the agreement of July 6, 1951, was so that it could be planted by Imperial to produce a crop from which kenaf seed would be obtained. But when CCC sold the diseased seed in question to Imperial, it sold something which was worthless and unfit for use for this particular purpose.

This is not a situation where short quantity or less productiveness or inferior quality of seed is the basis of a claimant's contention. Rather, it is a case where that which was bargained for was actually not delivered at all. With the delivery of diseased seed—utterly unfit for the purpose intended and therefore worthless—there was a failure of consideration which rendered ineffective the general language of disclaimer upon which CCC relies.

The seed cases in which broad disclaimer of warranty language has been given effect are clearly and completely distinguishable from the instant facts. Suffice it to say that in such cases the seller seeking the protection of such language is invariably a small-business man whose need for such protection has been recognized by the customs of the business in which he engages. The courts have said that if such a merchant could not so protect himself he would find it hard to survive the litigation that would come to his door.

"The purchase price of a parcel of seed is usually insignificant as compared with the value of the crop that may be raised therefrom. For this small price the seed merchant may feel that he cannot afford to warrant" (*Hoover* v. *Utah Nursery Co.*, 79 Utah 12, 7 P. 2d 270, 273).

But such judicial solicitude has no place or justification here where the seller is neither a seed merchant nor the cost of the seed insignificant. Whatever policies may have influenced the decisions reached in those seed cases which arrive at contrary results to that urged by Imperial, they are not applicable here.

## CONCLUSION

It is respectfully submitted that the fundamental principles of justice and equity demand that Imperial be made whole. Furthermore, it appears beyond dispute that Imperial has a legal right to recover its out-of-pocket disbursements and expenses. Accordingly, it is submitted that there should be paid to Imperial by CCC the sum of $67,713.60, computed as set forth in exhibits B, C, and D attached hereto.

CHAS. D. LEWIS.

EXHIBIT A

Contract No. Alpm (Fx)-27735

## 1951-CROP KENAF CONTRACT

(United States)

THIS CONTRACT entered into by and between the COMMODITY CREDIT CORPORATION (hereinafter called "CCC"), a federally incorporated agency of the United States of America, and IMPERIAL AGRICULTURAL CORPORATION (hereinafter called "Contractor"), a Corporation organized and existing under the laws of the State of Connecticut, and having its principal place of business at 70 Pine Street, New York, New York.

WITNESSETH:

That, in consideration of the mutual covenants and agreements herein set forth, the parties hereto agree as follows:

*1. Sale of Existing Kenaf Seed*

CCC shall sell to Contractor at 98.5 cents a pound, net weight, 9,000 pounds of kenaf seed, subject to the following terms and conditions:

(a) Such kenaf seed shall be used by Contractor to plant approximately 450 acres of land which will be operated by Contractor in the State of Florida for the production of kenaf seed.

(b) The kenaf seed purchased by Contractor shall be delivered f. o. b. warehouseman's loading platform at warehouses designated by CCC in the State of Florida. Such seed has been purchased by CCC on the representation that it is of a germination not less than 70 percent, purity not less than 97 percent and moisture content not in excess of 14 percent. Contractor may, at his expense, cause such seed to be tested prior to removal from the warehouse and may reject such seed if it is not of the quality stated above. CCC shall not be liable for the quality of such seed except to the extent and in the manner herein stated.

(c) Contractor shall, not later than July 31, 1951, make payment of the purchase price of the kenaf seed by means of cash or certified check delivered to the Palm Beach (Florida) County PMA Committee, on behalf of CCC, which will thereupon issue to Contractor an order upon the warehouseman for the kenaf seed purchased by Contractor under this contract. Title to, and risk of loss of, such kenaf seed shall pass to contractor when such kenaf seed is received by contractor from the warehouseman.

(d) In the event that, due to weather or other conditions beyond the control of the Contractor, the Contractor is unable to cause to be prepared suitably the approximately 450 acres to be planted to kenaf pursuant to the provisions of Section 1 (a) hereof, the Contractor shall be under obligations only to cause to be planted such number of acres of kenaf as may reasonably be prepared. In such case, CCC shall have an option, expiring October 1, 1951, to purchase from the Contractor at 98.5 cents per pound, delivered in a warehouse in the State of Florida designated by CCC all unused kenaf seed purchased from CCC. If the Contractor is unable to demonstrate to CCC's satisfaction that Contractor's failure to cause the entire acreage to be planted was due to weather or other conditions beyond the control of the Contractor, the Contractor may submit the question to an arbitration board composed of one arbitrator appointed by the Contractor, one arbitrator appointed by CCC and a third arbitrator selected by the two arbitrators appointed by the parties hereto. The decision of the arbitrators, which shall include a determination as to which party shall bear the cost of such arbitration, shall be final and conclusive upon both parties hereto.

*2. Planting, Cultivation, and Harvesting*

(a) Contractor shall cause all kenaf seed sold to it by CCC to be planted in properly prepared soil during the 1951-crop year in the State of Florida on lands suitable for the production of kenaf, and to cause such crop to be grown, cultivated, and harvested in a workmanlike manner and in accordance with good farming practices.

(b) Contractor shall cause the 1951-crop kenaf seed produced from the kenaf seed purchased from CCC to be properly harvested, cleaned, and otherwise prepared in such manner as to assure the maximum of seed meeting the germination, purity and moisture content requirements specified in section 3 (a) of this contract.

*3. Purchase of 1951-Crop Kenaf Seed*

(a) CCC shall purchase and Contractor shall sell the entire quantity, up to a maximum of 135,000 pounds, of 1951-crop kenaf seed which is produced from seed purchased from CCC by Contractor and which has a germination of 75 percent or more, purity of 97 percent or more, and a moisture content not in excess of 14 percent: *Provided*, That CCC shall have an option to purchase on the same terms the production in excess of the stated maximum, which shall be exercised by written notice to the Contractor within thirty (30) days after Contractor informs CCC of the quantity available.

(b) The price of 1951-crop kenaf seed purchased by CCC shall be seventy-five (75) cents per pound, net weight, for kenaf seed having a germination of eighty (80) percent or more, a purity not less than 97 percent, and a moisture content not greater than 14 percent. The 1951-crop kenaf seed meeting the foregoing requirements for purity and moisture content, but having a germination between seventy-five (75) percent and eighty (80) percent, shall be subject to a discount of one (1) cent per pound for each percent below eighty (80) percent germination. The 1951-crop kenaf seed purchased by CCC shall be delivered, not later than May 31, 1952, in warehouses designated by CCC in the State of Florida and may be delivered in lots of not less than 10,000 pounds each, except that a lot representing the Contractor's total production or the final lot to be delivered may be less than 10,000 pounds. Title to, and risk of loss of, kenaf seed contracted to be purchased pursuant to this Section 3 shall pass to CCC upon receipt by CCC of warehouse receipts, invoices, weight certificates and inspection certificates acceptable to CCC. All in- and out-handling charges on lots accepted by CCC and storage charges on such lots from the date lots containing the quantity specified herein are stored in the warehouses shall be paid by CCC.

(c) The weight of the 1951-crop kenaf seed purchased by CCC, delivered in warehouses designated by CCC, shall be determined by warehousemen's in-weights with appropriate adjustment for tare.

(d) The germination, purity and moisture content of the 1951-crop kenaf seed purchased by CCC shall be determined, at Contractor's expense, from samples drawn and tested by an agency acceptable to CCC evidenced by a certificate issued by such testing agency. The 1951-crop kenaf seed purchased by CCC shall be delivered to CCC in clean, sound burlap bags containing approximately one hundred (100) pounds each, net weight, of kenaf seed, unless otherwise agreed upon by CCC and the Contractor. Each bag shall be tagged, at Contractor's expense, in accordance with instructions to be issued by CCC to show the lot number, weight and quality of the contents.

(e) CCC shall pay the purchase price for 1951-crop kenaf seed as determined under (b) of this section, purchased from Contractor for delivery in designated warehouse, upon receipt from Contractor of an invoice supported by acceptable warehouse receipts covering such 1951-crop kenaf seed, and supported by acceptable weight certificates and certificates of germination, purity and moisture content.

*4. Officials Not To Benefit*

No Member of, or Delegate to, the Congress of the United States, or Resident Commissioner, shall be admitted to any share or part of this contract or any benefit that may arise therefrom, but this provision shall not be construed to extend to the contract if made with a corporation for its general benefit.

*5. Inspection*

Contractor shall arrange to permit representatives of CCC at all reasonable times to observe the lands on which the kenaf seed purchased from CCC has been planted, the method of cultivation and harvest, and the methods used in preparing the crop for delivery to CCC.

*6. Contingent Fees*

Contractor warrants that it has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee and that no such consideration or payment has been, or will be, made. Breach of this warranty shall give CCC the right to annul the contract, or, in its discretion, to deduct the amount of such commission, percentage, brokerage, or contingent fee from any amount payable under this contract to Contractor. This warranty shall not apply to commissions payable by Contractor upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

*7. Pound*

The word "pound" as used in this contract means a Standard English pound avoirdupois.

*8. Records and Reports*

Contractor shall maintain complete and accurate records of all transactions under this Contract, including, but not limited to, dates, and locations of planting and harvesting, production records, dates and results of inspection, and all disbursements. Such records shall be made available to representatives of CCC at all reasonable times during ordinary business hours, who shall be permitted to make copies of such of the records as they deem necessary. Contractor shall furnish to CCC from time to time such reports as CCC may request concerning operations under this contract.

*9. Performance Bond*

Contractor shall furnish to CCC, within ten (10) days after receipt of request therefor, an acceptable surety bond conditioned upon his faithful performance of each and all of the provisions of the contract. Such bond shall be in the amount of six thousand seven hundred and fifty dollars ($6,750) shall be in form approved by CCC, and shall be issued by a surety acceptable to CCC. In the event the Contractor fails to furnish such bond within the specified period this contract shall be a nullity and shall be canceled without liability to their party.

*10. Nondelivery*

If CCC is unable to make delivery on the kenaf seed which it has agreed to sell to Contractor by reason of any event beyond its control, this contract shall become a nullity, and CCC's liability to the Contractor shall be limited to the return of any sums paid to CCC with respect thereto.

*11. Place of Execution*

This Contract has been entered into between the parties in the District of Columbia, United States of America, and shall be interpreted pursuant to Federal (United States) Contract Law.

IN WITNESS WHEREOF the parties hereto, being duly authorized to enter into this contract, have executed it by their duly authorized representative, this 6th day of July 1951.

COMMODITY CREDIT CORPORATION,
By C. D. WALKER, *Contracting Officer.*

Attest:
E. D. BELL.

IMPERIAL AGRICULTURAL CORPORATION,
By CHAS. D. LEWIS, *Assistant to the President.*

Attest:
F. VAN MERNSTER.

---

Contract No. Alpm(Fx)-27735

KENAF SEED CONTRACT

AMENDMENT NO. 1

THIS CONTRACT entered into by and between the Commodity Credit Corporation (hereinafter called "CCC"), a federally incorporated agency of the United States of America, and Imperial Agricultural Corporation (hereinafter called "Contractor"), a corporation organized and existing under the laws of the State of Connecticut, and having its principal place of business at 801 Windsor Street, Hartford, Connecticut.

WITNESSETH:

WHEREAS, CCC and Contractor entered into a kenaf seed contract on July 6, 1951; and

WHEREAS, the parties desire to amend such contract. NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, such contract is hereby amended as follows:

1. The first paragraph is amended to read as follows:

"THIS CONTRACT entered into by and between the Commodity Credit Corporation (hereinafter called "CCC"), a federally incorporated agency of the United States of America, and IMPERIAL AGRICULTURAL CORPORATION (hereinafter called "Contractor"), a corporation organized and existing under the laws of the State

of Connecticut and having its principal place of business at 801 Windsor Street, Hartford 1, Connecticut."

2. Section 1 (b) is amended to read as follows:

"The kenaf seed purchased by Contractor shall be delivered f. o. b. warehouseman's loading platform at warehouses designated by CCC in the State of Florida. Such seed has been purchased by CCC on the representation that it is of a germination not less than 70 percent, purity not less than 97 percent and moisture content not in excess of 16 percent. Contractor may, at his expense, cause such seed to be tested prior to removal from the warehouse and may reject such seed if it is not of the quality stated above. CCC shall not be liable for the quality of such seed except to the extent and in the manner herein stated."

IN WITNESS WHEREOF the parties hereto, being duly authorized to enter into this CONTRACT, have executed it by their duly authorized representative, this 30th day of July 1951.

COMMODITY CREDIT CORPORATION,
By C. D. WALKER, *Contracting Officer.*

Attest:
CHARLES B. INGRAM.

IMPERIAL AGRICULTURAL CORPORATION
By ERNEST H. JACOBI, *Vice President.*

---

Attest:
BETTY L. BROWN,
*Assistant Secretary.*

Contract No. Alpm(Fx)-27735

KENAF SEED CONTRACT

AMENDMENT NO. 2

THIS CONTRACT entered into by and between the Commodity Credit Corporation (hereinafter called "CCC"), a federally incorporated agency of the United States of America, and Imperial Agricultural Corporation (hereinafter called "Contractor"), a corporation organized and existing under the laws of the State of Connecticut, and having its principal place of business at 801 Windsor Street, Hartford 1, Connecticut.

WITNESSETH:

WHEREAS, CCC and Contractor entered into a Kenaf seed contract on July 6, 1951; and

WHEREAS, the parties desire to amend such contract. NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinset forth, such contract is hereby amended as follows:

The opening paragraph of Section 1 is amended to read as follows:

"CCC shall sell to Contractor at 98.5 cents a pound, net weight, 9,126 pounds of kenaf seed, subject to the following terms and conditions:"

IN WITNESS WHEREOF the parties hereto, being duly authorized to enter into this CONTRACT, have executed it by their duly authorized representative, this 10th day of August, 1951.

COMMODITY CREDIT CORPORATION,
By C. D. WALKER, *Contracting Officer.*

Attest:
CHARLES B. INGRAM.

IMPERIAL AGRICULTURAL CORPORATION,
By C. J. GRIMER, *Treasurer.*

Attest:
BETTY L. BROWN,
*Assistant Secretary.*

---

EXHIBIT B

APRIL 2, 1952.

Mr. G. F. GEISSLER,
*President, Commodity Credit Corporation,*
*United States Department of Agriculture, Washington, D. C.*

DEAR MR. GEISSLER: In our various conversations, we advised you that we strongly feel that we should be reimbursed for our costs in growing, harvesting, and delivering the 1951 kenaf seed crop, due to the fact that this crop was a failure, and that the failure was caused by the diseased seed furnished us by Commodity

Credit Corporation. We have, therefore, prepared and submit herewith invoice revealing those total costs.

You no doubt are familiar with the fact that we have already submitted invoices covering poundages of seed delivered, and that those invoices have been paid. We have, therefore, shown the aggregate of those invoices as a deduction in the current invoice from the net amount due.

May we express our appreciation for the various courtesies extended in the review of this situation, and the hope that you will find it possible to give early attention to the favorable settlement of the whole matter.

Very truly yours,

THE IMPERIAL AGRICULTURAL CORP.,
CHAS. D. LEWIS,
*Assistant to the President.*

## EXHIBIT C

Form CCC 175
Form Approved by Comptroller General, U. S. April 3, 1941

COPY

U. S. DEPARTMENT OF AGRICULTURE
PRODUCTION AND MARKETING ADMINISTRATION
COMMODITY CREDIT CORPORATION
BLIC VOUCHER. PURCHASE PROGRAM
(Agricultural commodities and related services)

S. O. VOUCHER NO.
BU. VOUCHER NO.
PAID BY
SERIAL NO. B - 203205

Voucher prepared at Hartford, Connecticut, Date March 31, 19 52

UNITED STATES, Dr., To [illegible] (PAYEE) (PAYEE'S ACCOUNT NO.)

Lienholder as joint payee Bems (LIENHOLDER)

Payee's address 801 Windsor Street (STREET) Hartford 1, (CITY) Connecticut (STATE)

Address to which check shall be mailed 801 Windsor Street (STREET) Hartford 1, (CITY) Connecticut (STATE)

FOR USE OF PAYING OFFICER

| (DELIVERY OR SERVICE) Date | DESCRIPTION OF TRANSACTION (STATE QUALITY AND GRADE OF COMMODITY) | QUANTITY (NO. OF UNITS) | UNIT | AMOUNT CLAIMED PER UNIT | AMOUNT CLAIMED DOLLARS | cts. |
|---|---|---|---|---|---|---|
| | Kenaf Seed Purchase - SCX 186a | | | | | |
| Program No. & Title | | | | | | |
| | Cost of growing, harvesting, & delivering | | | | | |
| July 6, 1951 (CONTRACT DATE) | 1951 Kenaf Seed Crop (Schedule attached) | | | | 295,394.98 | |
| | Less - previously billed: | | | | | |
| ALPH (Fa) 27795 (CONTRACT NO.) | Invoice No. B - 203201 Bu.Voucher No. 102507 | | 38,573.82 | | | |
| | Invoice No. B - 203202 Bu.Voucher No. 102508 | | 12,640.12 | | | |
| | Invoice No. B - 203203 Bu.Voucher No. 102509 | | 9,467.24 | | 27,681.18 | |
| (DELIVERY ORDER NO.) | | | | | | |
| (SHIPPING ORDER NO.) | | | | | | |
| (ORDER FOR SERVICE NO.) | Shipping point McClenteen, Florida | | | | | |
| | Destination Fort Pierce, Florida Weight of Shipment | | | TOTAL | 267,713.60 | |
| (PURCHASE ORDER NO.) | Trk. Lic. No. or Car No. Govt. B/L No. | | | | | |

CERTIFICATE OF VENDOR

I certify that the above bill is correct and just, that payment therefor has not been received, that the commodity or services listed hereon has been delivered to or performed for the Commodity Credit Corporation; that all statutory requirements as to American production and labor standards, and all conditions of purchase applicable to the transactions have been complied with, that State or local sales taxes are not included in the amounts billed, and that I have the title to/control or interest in the listed commodity or services, that they are free from any or all liens and encumbrances except the interest owned by the lienholder(s) named above.

March 31, 52 Imperial Agricultural Corporation
Date Vendor

By (signed)C.J.Grimes Title Treasurer

(For Audit use only)
Differences
Amount verified; correct for
(SIGNATURE OR INITIALS)

(A) Place of checkloading (CITY) (COUNTY) (STATE)

CERTIFICATE OF INSPECTOR

I certify that I supervised and checked the delivery and inspected the commodity listed above and found the quantity delivered correct and the quality to be of the grade stated.

Date 19
Federal State Inspector

CERTIFICATE OF RECEIPT

(D) I certify that the commodity described, after having passed proper inspection, was received and accepted in good condition at the quantities stated, for and on behalf of the Commodity Credit Corporation, or if services, that such services were performed as stated.

Date 19 (RECEIVING AGENT)

(B) CERTIFICATE OF PURCHASE

I certify that we received from the Commodity Credit Corporation the commodities listed in the quantity and grade stated, which will be handled by us in accordance with the terms and conditions of

Contract No.
Date 19
Purchaser
By Title

MEMORANDUM

Do **NOT** sign this memorandum copy

Type or print names in certificates.

SUPPLEMENTAL CERTIFICATIONS

ACCOUNTING CLASSIFICATION (FOR COMPLETION BY ADMINISTRATIVE OFFICE)

| APPROPRIATION OR LIMITATION SYMBOL | APPROPRIATION TITLE | AMOUNT CERTIFIED |
|---|---|---|
| | | $ |

| COST ACCOUNT | | ENCUMBRANCE LIQUIDATED | |
|---|---|---|---|
| OBJECT | AMOUNT | UNITS | AMOUNT |
| | $ | | $ |

Paid by check drawn on Treasurer of the United States in favor of payee named above

Amount $
Check No.
Date 19

EXHIBIT D

SCHEDULE ATTACHED TO PUBLIC VOUCHER-PURCHASE PROGRAMS, UNITED STATES DEPARTMENT OF AGRICULTURE, PRODUCTION AND MARKETING ADMINISTRATION, COMMODITY CREDIT CORPORATION

Voucher Serial No. B–203204, dated March 31, 1952.
Program No.: Kenaf Seed Purchase—SCI 186a, contract date July 6, 1951.
Contract No. ALPM (Fx)—27735.

*Cost of growing and harvesting 1951 kenaf crop in Florida*

| | |
|---|---|
| Growing costs: | |
| Land rentals including preparation and planting | $22,786.23 |
| Seed | 9,107.86 |
| Fertilizer | 21,545.19 |
| Insecticides | 3,922.19 |
| Superintendence | 7,454.83 |
| Harvesting costs: | |
| Field labor | 4,903.77 |
| Mechanical supplies and expenses | 8,291.72 |
| Bags and tags | 196.65 |
| Seed analysis | 77.00 |
| Superintendence | 8,437.27 |
| Administration | 8,672.27 |
| Total | 95,394.98 |

EXHIBIT E

UNITED STATES DEPARTMENT OF AGRICULTURE,
COMMODITY CREDIT CORPORATION,
*Washington, D. C., May 29, 1952.*

Mr. CHARLES D. LEWIS,
*Assistant to the President, the Imperial Agriculture Corp.,*
*801 Windsor Street, Hartford 1, Conn.*

DEAR MR. LEWIS: This is in reply to your letter of April 2, 1952, regarding costs incurred in producing the 1951 crop of kenaf seed and request for reimbursement of the costs incurred, less payment for seed delivered to CCC in accordance with the terms of your 1951-crop kenaf contract, contract No. Alpm (Fx)—27735.

As you know, kenaf is a comparatively new crop in the United States so far as commercial production is concerned. Naturally anyone attempting to produce kenaf assumed the many risks incident to producing a new crop, as well as the risks involved in any type of farming. It is very unfortunate and regrettable that some of the 1951 kenaf seed contractors in the Western Hemisphere did not obtain the anticipated production. However, this was due to no fault or ngeligence on the part of CCC. It has not been established that the failure to obtain the anticipated production was caused by seed furnished by CCC. On the contrary, this may well have been due to failure to use proper fungicides and otherwise properly care for the kenaf as required in section 2 (a) of the contract. In any event, CCC had had no previous experience with kenaf, and it bought and sold the seed in good faith without notice that there was anything wrong with the seed and without any knowledge of the disease which you mention. The contractor had the right under the contract to inspect and have the seed tested if he so desired and could have rejected any part or all of such seed offered by CCC. Under these circumstances, CCC would not be liable for failure to produce a crop from the seed sold, even if it should be determined that the seed were affected by a heretofore unreported disease.

Moreover, the last sentence in section 1 (b) of the contract makes it clear that CCC did not warrant the kenaf seed and that CCC is not to have any liability with respect to the seed, other than to the extent and in the manner stated in the contract. Accordingly it is clear under the contract that CCC is not liable under any circumstances for failure of any contractor to produce a crop of kenaf.

CCC has fulfilled its obligation and is not liable for the failure of the Imperial Agricultural Corp. to produce the anticipated kenaf seed crop. Accordingly, the claim filed by your corporation must be rejected.

Sincerely yours,

G. F. GEISSLER, *President.*

EXHIBIT F

REPORT ON APPARENT VIRUS TIP-STREAK OF KENAF IN CUBA

(By Frederick L. Wellman, chief agriculturist and field consultant in pathology)

For many decades countries of the Western Hemisphere have depended on the Orient for the bulk of their sacking fibers used in connection with shipment of sugar, coffee, cacao, medicinals, maize, rice, beans, and many other crops to world markets. It has been a source of dissatisfaction to Latin America that the best sacking fiber was imported. During the last 10 years serious attempts were instigated to rectify this condition. Through cooperative efforts in several countries, but especially in Cuba, the fiber plant kenaf (*Hibiscus cannabinus L.*) was studied and adopted for production to use for sacking fiber in the Occident. The country of Cuba, through the Ministry of Agriculture, and the United States Department of Agriculture's Office of Foreign Agriculture Relations took the lead in this work. A Cooperative Fiber Commission was established in Cuba and its technicians have gained worldwide recognition for their efforts in this endeavor in the last few years.

Cuba has grown several thousand acres of kenaf in experimental, demonstration, and commercial undertakings. In 1951 special requirements were seen for seed to supply a large market, and as a consequence some 290.75 caballerias (9,595 acres) were planted and are nearing harvest now, in the month of November 1951, when this is being written. This amount of planting should produce about 2,878,500 pounds of seed according to some estimates. Judging from agronomic findings this should plant something over 115,000 acres of this crop for fiber in the hemisphere.

Just at the time when this accomplishment seemed in sight a serious and severe disease has appeared, that is apparently new and unknown as a crop condition with regard to its properties. It has been found positively in 2,310 acres of the 9,595 now growing in Cuba. This was the reason for a special call for a preliminary study of the situation by both Mr. Guy Bush, agricultural attaché of the United States Embassy in Cuba, and by Dr. A. G. Kevorkian, Director of the Cooperative Fiber Commission, and by Mr. Claud L. Horn of OFAR. Those who have been most deeply engaged in this preliminary work have been Edson J. Hambleton, field consultant in entomology (OFAR, under point IV); J. Alex Munro, entomologist (OFAR, under point IV); A. G. Kevorkian, Director of the Cooperative Fiber Commission and pathologist (Cuba and OFAR, under point IV); and Frederick L. Wellman, chief agriculturist and pathologist (Costa Rica and OFAR, under point IV). It should be acknowledged here that many Cuban farmers, officials, and especially technicians have given much help during these preliminary studies. The services of the technicians, Manuel A. Tamargo and the most unselfish assistance of the long-time student of kenaf, Julian Acuna, should be given special note at this point.

HISTORY OF THE DISEASE

There is no published record of the occurrence of this apparent streak disease of kenaf. Harold D. Lynn, plant breeder of the Cooperative Fiber Commission, first observed it in August 1950, and his observations were corroborated by Dr. Acuna at that time when he was taken to see it in the breeding plots.

It is of interest to note that virus workers in Africa have transferred the cotton leaf curl or crinkle virus to kenaf, but the symptoms of the Cuban disease are not the same as those observed in Africa. I have observed relatively small numbers of plants with apparent virus mottling next to virus mottled cotton in El Salvador in the plantation of Mr. Winall Dalton in 1946. This was not serious at the time and lack of facilities did not allow its study. Since then Crandall has reported what he has called "crazy top" of kenaf in El Salvador.

IMPORTANCE OF THE TROUBLE

Over 24 percent of the lands growing kenaf for seed in Cuba are known to have diseased plants. These data are the result of surveys made by members of the Cooperative Fiber Commission and Dr. Acuna. Until the nature of the disease is known it cannot be determined what seed should be planted. No one can know at present if it is seed borne, and there is a question if it should be sent to any country where the trouble does not occur. There is likewise the danger of this disease being spread to other crops like cotton. Until this is studied no one can be sure what such a malady might do to one of the staple or critical crops in the Western Hemisphere.

### THE DISEASE SYMPTOMS

The symptoms described here are wholly from field observations. Free use has been made of the cooperative eyes of many during the last 2 weeks. Diseased plants were studied varying in size from those quite young without flowers and less than knee high, to those towering 8 to 10 feet or more in height and bearing mature seed. The symptoms as described must, of course, be considered provisional. Only after study under controlled conditions, on known inoculated plants, is it possible to determine the true course of disease development.

The first symptom appears to be slightly sunken, somewhat discolored, streak-like areas on the tender, rapidly growing, tip part of the stem. This tip soon is bent to one side and downward in some cases. Tip leaves have a misshapen appearance, and the leaves below may be marked with ring spots of reddish and purple color, at least in the green varieties of the plant. An occasional plant exhibits a slight mottling of leaves characteristic of virus infections, but no vein-clearing symptoms have been found.

The streaking of terminal parts of the stem becomes darker with age. The stem loses its resilience and retains almost a brittle rigidity. The streaked tissues do not grow, which causes crooked tips and awkward looking plants. As the plant grows older curious large lense-shaped lesions develop, surrounded by a dark border. These are in most cases obviously connected with the streaking, but in other cases the lesions occur without streaked tissues leading to them.

If the plant is attacked early enough in its maturity, flower buds are killed by necrosis of peduncles and consequent death of unopened buds. In some diseased plants flowers are developed. In these the petals are stunted and show a crinkling and wrinkled reaction, and are harsh and rather stiff to the touch. They also do not wilt nearly as rapidly as healthy blossoms. Many flowers mature seeds on diseased plants, and in some cases less than half the flowers set seed. Most often killed flowers and buds were found scattered between living flowers and buds that were struggling to produce seed.

When the outset of the disease occurs sufficiently early it causes death of the tip buds, and considerable tissue below this part. If the diseased plant is reasonably supplied with moisture and nutrients in the soil the plant becomes slightly enlarged in the region just below the dead tip, and a club or bat-like stem results. The side buds may be stimulated to grow, and the leaf petioles where they attack become enlarged.[1] Meanwhile, the necrosis advances downward, apparently, and small bead-like pockets of dead tissue develop below the epidermis of the stem. These pockets are found readily. This is preceded, so it seems, by small, greasy dark spotting of the stem surface, and as the disease condition advances in age and the plant continues its attempt to grow the dead pockets may develop into intumescences that actually break open in corky clumps.

The most severe effect is early and complete death of plants. To a student of the viruses, these symptoms are very strongly suggestive of attack from one of the streak-virus troubles. It seemed so characteristic in the field to a number of trained observers that it resulted in my calling it tip-streak, as is evidenced in the title of this report.

It should be noted, however, that there have been no studies that have proved its virus nature. Moist chamber cultures have resulted in development of all kinds of saprophytic fungus growth on diseased tissues. *Fusarium* and *Colletotricum* spores have been found in abundance. Agar cultures made by Manuel A. Tamargo have yielded neither bacterial nor fungus cultures from aseptically handled diseased tissues.

### GEOGRAPHIC DISTRIBUTION OF THE DISEASE

Such a disease as that just described is so serious and so marked in appearance that it is hardly believable that it occurs in the Orient on kenaf or it would have been reported long ago. Besides its widespread occurrence in Cuba, Dr. Acuna saw the disease on kenaf on a trip to Florida (U. S. A.) from which he very recently returned. Mr. Stanley Erb reports that he observed it on kenaf plants he had planted in Alabama, and it has also been reported recently from South Carolina.

### FIELD SPREAD AND DISTRIBUTION

The studies spread and distribution are as yet only very superficial. In Cuba, fields were seen in which the distribution was so evenly spaced throughout

[1] As a result of axillary bud development, several terminals may result giving the plant a witch's broom effect.

that it gave the immediate impression of being a seedborne malady, later multiplied by insect carriers. In one planting, counts were made at 15 stations across it, at the end of each 10 paces. The percentages of disease at these stations were as follows: 76, 62, 80, 84, 92, 78, 72, 60, 16, 24, 18, 28, 6, 36, 44. This seemed a common type of distribution.

In some fields it appears that infection occurred in masses at the edges, becoming less intense as the observer worked inwards toward the center. Fields were seen in which infected plants occurred in a few limited places along the edges. Other young fields were found in which numerous small groups of diseased plants were observed at apparently regular intervals throughout. In no cases studied, and this was given very careful consideration, was it apparent that the disease was clearly the result from infection from virus-diseased weeds nearby.

Without extended research no statement can be made as to whether the disease is or is not seedborne. Observation of many fields indicate the greater likelihood of the former.

It should be pointed out that in the list of 164 different plant viruses and well-known strains of viruses only 5 are known to be seedborne, and only 2 are soil-borne. This may well be one of the rare seedborne viruses (if it proves to be a virus when adequately studied).

### FIELD ENVIRONMENT AND THE DISEASE

It seems impossible to connect any cultural practice with occurrence of this so-called tip streak at this time. The latest planted fields in some areas had little little or no disease. But a field, planted less than a month ago, much later than the "latest planted" fields, was found badly diseased with the trouble.

### OCCURRENCE FROM SEPARATE SEED LOTS

Without careful study and experimental handling no one has a right to infer if a disease is seedborne. This becomes even more suspect if he relies on reports from somewhat disturbed growers about their seed sources. However, one grower showed me three fields all planted from his own seed and all were disease free. A neighbor had disease in his field from another seed source. Another grower showed me a field apparently free, one field with only a trace of disease, and a third field with about 80 percent disease all said to be from the same seed source. Practically the same results were reported by a third grower. Conflicting evidence has been obtained from my own visits and from conversation and reports from others.

### POSITIVE EVIDENCE OF RESISTANCE

A striking characteristic of the appearance of the kenaf fields as they are at present in Cuba is the variability in plant type and leaf conformation. The present crop is a highly variable one. This variability is apparently found in relative susceptibility and resistance to the disease when a severely affected planting is examined. There were no areas in commercial fields where the disease attacked all the plants with equal severity. This matter of equal severity is a common observation in many of the refined crop varieties ordinarily produced, such as in beans, potato, tomato, and cucumbers. These are fruitful sources of work for plant breeders.

It would appear that Mr. Harold D. Lynn, plant breeder for the Cooperative Fiber Commission, has conclusive evidence in his plantings of nearly 2,000 different strains and crosses of wide variability in resistance and susceptibility.

The very best part of the story is that he has in many cases what seems to be undoubtedly high resistance if not immunity.

This disease can, therefore, be controlled. Its nature, and how it is carried in the fields will have to be determined. If it is a virus it may be a complex of more than one strain, which may be a complicating factor in symptom expression and the resistance problem. It will be necessary to know when the virus attacks, and how to insure infection, or susceptible strains may appear healthy through escape. The genetics of resistance to the disease is the key to the final solving of the whole problem. And it is safe to predict that the genetic approach will end not only in producing a resistant crop, but one that is an even better yielder than anything now grown, or that would have been grown, without such use of the methods of science.

HABANA, CUBA, *November 24, 1951.*

DEPARTMENT OF AGRICULTURE,
*Washington, D. C., July 7, 1955.*

Hon. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,*
*House of Representatives.*

DEAR CONGRESSMAN CELLER: This is in reply to your request for a report on H. R. 5285, a bill for the relief of the Imperial Agricultural Corp.

The Department strongly recommends against the enactment of this bill for the reasons hereinafter set forth. However, your attention is called to the fact that the kenaf seed project was underwritten by funds provided under the Defense Production Act of 1950. Therefore, we assume that any relief of the nature provided by this bill would properly be a matter in which the Office of Defense Mobilization (successor to Defense Production Administration) would have an interest and about which they should be consulted.

The bill provides that the Secretary of the Treasury be authorized and directed to pay to the Imperial Agricultural Corp. the sum of $67,713.60 in full settlement of all claims of such corporation against the United States for reimbursement of actual expenses incurred in the production of a crop of kenaf seed in 1951 under contract with the Commodity Credit Corporation.

Approximately a dozen contracts were negotiated by the Commodity Credit Corporation for the production of kenaf seed in 1951. Prior to entering into contracts for the production of kenaf seed under the 1951 kenaf seed and fiber program, the Department consulted with a number of persons who were recognized as being most familiar with kenaf seed and fiber production in the Western Hemisphere. As a result of those consultations and discussions the Department took the position that so little was actually known about such production that it would be necessary in discussions between prospective contractors and representatives of the Department of Agriculture to point out clearly that, because of the circumstances involved, the Department would make no guaranty as to the quantity or quality of kenaf seed that might be produced from the seed purchased from Commodity Credit Corporation.

During the spring of 1951, representatives of the Department of Agriculture discussed the proposed kenaf seed and fiber program with Mr. Charles D. Lewis, assistant to the president of the Imperial Agricultural Corp., 801 Windsor Street, Hartford, Conn., and in all instances Department representatives were careful to point out to Mr. Lewis and all other interested persons that there was little or no information available to serve as operating guides, that the Department was making no guaranty as to crop or income, and that such persons would enter into the contract at their own risk.

The Commodity Credit Corporation entered into a 1951-crop kenaf contract on July 6, 1951, with the Imperial Agricultural Corp., 70 Pine Street, New York, N. Y. The contract provided that CCC would sell to the contractor 9,000 pounds of kenaf seed at 98.5 cents per pound, net weight, subject to certain terms and conditions, among which were the following:

1. Contractor would cause all kenaf seed sold to it by CCC to be planted in properly prepared soil during the 1951 crop year in the State of Florida.

2. Contractor would cause the 1951-crop kenaf seed produced from the seed purchased from CCC to be properly harvested, cleaned, and otherwise prepared in such manner as to assure the maximum of seed meeting the germination, purity, and moisture content requirements specified in section 3 (a) of the contract.

3. Contractor should sell to CCC at specified prices the entire quantity up to a maximum of 135,000 pounds of 1951-crop kenaf seed which might be produced from seed purchased from CCC by contractor. The prices at which CCC agreed to purchase the seed produced were believed to be sufficiently high to compensate in part for the risk involved.

Subparagraph 1 (b) of the contract stated that the kenaf seed for planting in 1951 had been purchased by CCC under representation that it was of a germination not less than 70 percent, purity not less than 97 percent, and moisture not in excess of 14 percent, and that the contractor might, at his own expense, cause such kenaf seed to be tested prior to the removal from the warehouse and might reject such seed if it was not of the quality stated.

In a letter addressed to the president of Commodity Credit Corporation dated April 2, 1952, Mr. Charles D. Lewis alleged that his company's 1951 kenaf crop was a failure and that the failure was caused by diseased seed furnished by the Commodity Credit Corporation. He also requested that the Department of Agriculture reimburse the Imperial Agricultural Corp. for costs incurred in producing the 1951 crop of kenaf seed less payment for seed delivered to the Com-

modity Credit Corporation. In this connection we wish to point out that the contract under which Mr. Lewis' company operated provided that the Commodity Credit Corporation would not be liable for the quality of the seed planted in 1951 except to the extent and in the manner stated in the contract.

In a letter dated May 29, 1952, in reply to Mr. Lewis' request for reimbursement of costs, less returns from the crop, the Department set forth its views with respect to his request for payment, and pointed out to Mr. Lewis that the last sentence in section 1 (b) of the contract made it clear that CCC did not warrant the kenaf seed, and that CCC had fulfilled its obligation under the contract. It was further stated that CCC was not to have any liability with respect to the seed other than to the extent and in the manner stated in the contract. Moreover, it was pointed out that it was clear under the contract that CCC would not be liable under any circumstances for failure of any contractor to produce a crop of kenaf, and that the claim filed by Imperial Agricultural Corp. must be rejected.

The production experiences of the 12 contractors varied all the way from no production to production that might be considered reasonable. No other claims have been filed under the contracts up to this time.

In view of Mr. Lee's request of July 7 that this report be submitted immediately, we have not obtained advice from the Bureau of the Budget as to the relationship of this proposed legislation to the program of the President.

Sincerely yours,

TRUE D. MORSE, *Acting Secretary.*

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Calendar No. 1901

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1881

# ROBERT GARTENBERG

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany S. 764]

The Committee on the Judiciary, to which was referred the bill (S. 764) for the relief of Robert Gartenberg, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Robert Gartenberg. The bill provides for an appropriate quota deduction and for the payment of the required visa fee.

### STATEMENT OF FACTS

The beneficiary of the bill is a 31-year-old native and citizen of Austria who last entered the United States at New York on June 13, 1949, when he was admitted as a visitor. Prior to his entry, the beneficiary had performed services as a civilian for the American Red Cross and the United States Army when the American forces invaded North Africa. He married a lawfully admitted resident alien in 1953 and presently resides with his wife and an infant citizen child in Omaha, Nebr., where he is employed as a salesman. The alien is unable to adjust his immigration status administratively because he has been convicted for 2 offenses for which he was placed on probation in 1 case and for which he received a suspended sentence in the

other, and because he has failed to comply with certain of the requirements relating to alien registration. It appears that his deportation at this time would result in a hardship on his wife and infant citizen child.

A letter, with attached memorandum, dated June 22, 1955, to the then chairman of the Senate Committee on the Judiciary from the Commissioner of the Immigration and Naturalization Service with reference to the bill reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
*Washington, D. C., June 22, 1955.*

Hon. HARLEY M. KILGORE,
*Chairman, Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

DEAR SENATOR: In response to your request for a report relative to the bill (S. 764) for the relief of Robert Gartenberg, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Omaha, Nebr., office of this Service, which has custody of those files.

The bill would grant this alien the status of a permanent resident of the United States upon payment of the required visa fee. It would also direct that one number be deducted from the appropriate immigration quota.

The beneficiary is chargeable to the quota of Austria.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE ROBERT GARTENBERG, BENEFICIARY OF S. 764, 84TH CONGRESS

The beneficiary, Robert Gartenberg, known as David R. Gordon, was born June 4, 1924, at Vienna, Austria, and is a citizen of that country. He is married and has one child. A prior marriage was terminated by divorce on October 31, 1952, the beneficiary being charged with extreme cruelty. He resides with his wife and daughter at 536 South 29th Street, Omaha, Nebr. The beneficiary is employed as a television salesman at a salary of $75 per week. His assets consist of savings in amount of $550. His parents reside in Algeria.

The beneficiary's only entry into the United States was at New York, N. Y., on June 13, 1949, when he was admitted as a visitor. No extensions of stay were granted and deportation proceedings were instituted on March 13, 1951, on the ground that he had remained in the United States longer than permitted. On October 12, 1954, the special inquiry officer ordered that he be deported. An appeal from this order was dismissed by the Board of Immigration Appeals on February 4, 1955. There appears to be no administrative relief available to the beneficiary at this time.

The beneficiary has had no military service and is not required to be registered under the Universal Military Training and Service Act.

The beneficiary was arrested May 24, 1951, at Schenectady, N. Y., on a charge of indecent exposure. The charge was reduced to disorderly conduct and he was found guilty on July 6, 1951, and placed on probation. He was convicted at New York, N. Y., on July 23, 1953, for illegal possession of a blackjack and received a 90-day suspended sentence. He traveled from New York, N. Y., to Omaha, Nebr., during August 1953 to evade deportation and assumed the name David R. Gordon. His wife is a lawful resident alien in the United States.

Senator Roman L. Hruska, the author of the bill, has submitted numerous letters and documents in connection with the case, among which are the following:

OMAHA, NEBR., *January 5, 1955.*

Re Robert Gartenberg

Senator ROMAN HRUSKA,
*Senate Office Building, Washington, D. C.*
(Attention: Mr. Allen McArthur.)

DEAR SIR: I am writing you at the request of Senator Roman Hruska in regard to my client and personal friend, Robert Gartenberg, now of Omaha, Nebr.

Mr. Gartenberg was born in Vienna, Austria, on June 4, 1924, of a Jewish father and a Catholic mother, who raised him in the Roman Catholic faith. Because the father was of the Jewish faith, the Gartenberg family was persecuted by the Nazis. Consequently, the Gartenberg family escaped from Austria and found their way to France. From France they went to Algeria, French North Africa, where the father established an export business and Robert grew up.

When Robert was 18 years old the American forces invaded north Africa and subsequently occupied Algeria. Robert, although he was only 18 years of age, offered his services to the American Red Cross. He then worked for them for a period of approximately 5 years as an interpreter and club manager.

Later he was employed by the United States Army as a civilian and performed services as interpreter, switchboard operator, in the American Graves Registration Services, and other clerical duties.

Robert performed his services so well for the American Red Cross and for the United States Army as a civilian that he received many compliments and recommendations. In fact, he worked so fervently for the Americans that the French accused him of being an American spy.

In the summer of 1949, as Robert's father needed someone to purchase American articles in the United States, Robert obtained a visitor's visa and arrived in the United States on June 13, 1949. He entered the United States as a bona fide nonimmigrant.

In December of 1949, while in New York City, he married a native-born American citizen, but was later divorced from her in Florida. On December 29, 1953, he married one Erika Gottgetrue, an immigrant legally admitted to the United States for permanent residence.

Ever since Robert entered the United States he has tried to stay here legally, but was rebuked in all of his attempts. He loves the United States so much, having been with Americans since he was 18 years of age, that he came to Omaha under the assumed name of David Gordon, where he was arrested by the Immigration Service.

I, as his attorney, in conjunction with another attorney, Mr. Joseph V. Benesch, have attempted to have him admitted legally and if this failed to obtain voluntary departure for him. It is our contention that as he is married to an alien lawfully admitted to the United States for permanent residence, he is entitled to preference status, could apply for change of status and stay here. However, the examining officer ruled against us and ordered Robert deported.

In his report, the officer states that Robert was arrested three times. This is not true. He was arrested twice and each time the charges were dismissed. Robert is now employed by the famous Fuller Brush Co. as a salesman.

Erika, Robert's wife, is now pregnant, and they are expecting their first child in 6 or 8 weeks. It would be an extreme hardship on Erika if Robert would have to leave her and their child. Confidentially, the doctor says it looks like twins.

As Senator Hruska will tell you, I am in a wheelchair, having the disease known as muscular dystrophy. Robert, being a personal friend of mine, does many things for me, helping me in and out of the wheelchair, etc. So, you see, I have a personal interest in his staying here.

Kindly request Senator Hruska to do all he can for Robert Gartenberg and keep me informed of any new developments.

Very truly yours,

HERBERT F. SPIELHAGEN,
*Attorney at Law.*

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UNITED STATES SENATE,
*March 3, 1956.*

Hon. JAMES O. EASTLAND,
*Chairman, Senate Judiciary Committee.*

DEAR SENATOR EASTLAND: There is pending before your committee S. 764, for the relief of Mr. Robert Gartenberg.

Last July, the chairman of the Judiciary Committee advised me the bill was postponed indefinitely in view of a recent order reinstating the privilege of preexamination procedures. Mr. Gartenberg was advised of this administrative remedy, and he filed his application for preexamination at Omaha, Nebr. His application was denied, and an appeal to the Board of Immigration Appeals was dismissed on jurisdictional grounds, January 26, 1956. A copy of the order dismissing the appeal is enclosed herewith.

Inasmuch as Mr. Gartenberg has exhausted his administrative remedy, it will be appreciated if the committee can resume consideration of S. 764.

Sincerely yours,

ROMAN L. HRUSKA,
*United States Senator, Nebraska.*

DEPARTMENT OF JUSTICE,
BOARD OF IMMIGRATION APPEALS,
*January 26, 1956.*

**In re Robert Gartenberg, alias David Gordon.**

In deportation proceedings in behalf of respondent, Herbert F. Spielhagen, Esq., 412 Redick Tower, Omaha, Nebr., and Joseph V. Benesch, Esq. 1130 City National Bank Building, Omaha, Nebr.

Charges: Warrant, act of 1924—Remained longer, visitor; lodged, none.

Detention status: Released on conditional parole.

This case comes forward on appeal from an order entered by the special inquiry officer on November 22, 1955, denying the respondent's motion requesting a reopening of the proceedings in order that an application for preexamination may be considered.

The respondent, a 31-year-old married male, has had continuous residence in the United States since his admission as a temporary visitor at New York, N. Y., on July 13, 1949, until August 13, 1949. The remaining facts in this case have been heretofore fully covered by the special inquiry officer and this board in several prior determinations.

Counsel by brief on appeal conceded that the facts in the case at bar have not changed since the respondent was denied voluntary departure on March 2, 1953. However, it is counsel's contention that since the regulations authorizing preexamination have been changed, the proceedings should be reopened to afford the respondent an opportunity to make application therefor.

When this case was last before us on February 4, 1955, we dismissed the appeal from an order entered by the special inquiry officer on December 3, 1954, denying the respondent's application requesting that he be permitted to depart voluntarily from the United States in lieu of deportation and directing that he be deported pursuant to law on the charge stated in the warrant of arrest. As stated in our decision of February 4, 1955, the proceedings against the respondent were instituted within 5 years of entry and the order of the special inquiry officer is final in a case where voluntary departure is denied as a matter of discretion. The special inquiry officer's decision of November 22, 1955, denied a reopening of the hearing to afford the respondent an opportunity to apply for preexamination on the ground that such a relief can only be granted in connection with a grant for voluntary departure. Therefore, this board is without jurisdiction to consider the matter of preexamination on appeal.

It is conceded that this case does have appeal insofar as the relief requested is concerned since the respondent's marriage at Omaha, Nebr., on December 29, 1953, to a native and citizen of Germany lawfully admitted to the United States for permanent residence at New York, N. Y., on September 21, 1951, has existed for over 2 years. A careful analysis of all the evidence of record shows the action of the

special inquiry officer in denying a reopening of the hearing for the purpose requested is not unjustified. We do not regard this to be an appropriate case to certify to ourselves in accordance with the applicable regulations. Accordingly, the following order will be entered.

ORDER: It is ordered that the appeal be dismissed.

———— ————, *Chairman.*

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 764) should be enacted.

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Calendar No. 1902

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1882

# JONAS DERCAUTAN

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany S. 832]

The Committee on the Judiciary, to which was referred the bill (S. 832) for the relief of Jonas Dercautan, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Jonas Dercautan. The bill provides for an appropriate quota deduction and for the payment of the required visa fee.

### STATEMENT OF FACTS

The beneficiary of the bill is a 49-year-old native of Rumania and citizen of Argentina, who last entered the United States as a visitor on May 25, 1953. He resides in Washington, D. C., with his brother, who operates a dry-cleaning establishment. The beneficiary has been offered a one-half interest in the business. Information is to the effect that the beneficiary has been under the care of a physician since 1954, when he suffered an acute heart attack, which has markedly restricted his activities. It is stated that the strain of travel would be dangerous to his health.

A letter, with attached memorandum, dated July 7, 1954, to the then chairman of the Senate Committee on the Judiciary from the Commissioner of Immigration and Naturalization with reference to a similar bill introduced in the 83d Congress for the relief of the same beneficiary, reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
*Washington 25, D. C., July 7, 1954.*

Hon. WILLIAM LANGER,
*Chairman, Committee on the Judiciary,*
*United States Senate, Washington 25, D. C.*

DEAR SENATOR: In response to your request of the Department of Justice for a report relative to the bill (S. 2840) for the relief of Jonas Dercautan, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Washington, D. C., field office of this Service, which has custody of those files.

The bill would grant this alien the status of permanent residence in the United States upon payment of the required visa fee. It also directs that one number be deducted from the appropriate immigration quota.

The alien is chargeable to the quota of Rumania.

Sincerely,

——— ———, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE JONAS DERCAUTAN, BENEFICIARY OF S. 2840

Jonas Dercautan was born on February 3, 1907, at Soroca, Besarabia, Rumania. His last residence abroad was in Buenos Aires, Argentina, of which country he is now a citizen. Mr. Dercautan last entered the United States at New York on May 25, 1953, where he was admitted as a visitor. He received extensions of stay, the last of which expired on May 24, 1954. His application for an additional extension was denied on May 28, 1954, and he was granted until June 24, 1954, to depart from the United States. Deportation proceedings were instituted on the ground that after admission as a visitor he remained in the United States longer than permitted. He has been granted the privilege of departing voluntarily from the United States but to date has not availed himself of that privilege.

The beneficiary was in business with a partner in Argentina to whom he sold his interest when he came to this country in 1953. He resides in Washington, D. C., with his brother, Mr. Maurice Derkay, who has offered him one-half interest in the Aladdin Cleaners which he operates. The beneficiary's wife resides in Argentina and is dependent upon him for support.

The following information was submitted to the Committee on the Judiciary in support of S. 2840, 83d Congress:

ALADDIN CLEANERS,
*Washington, D. C., July 15, 1954.*

Hon. PAT MCCARRAN,
*Senate Office Building, Washington, D. C.*

DEAR SIR: Once more I want to thank you for your effort in behalf of my brother Jonas. Am praying constantly that he shall be given the privilege of remaining in our country, on a permanent basis.

As you know, I operate a dry-cleaning establishment and the craft of spotting is the essence of good cleaning; slowly this craft is becoming extinct in our trade and it is getting difficult to hire experienced spotters, therefore, I have been training and teaching all methods, routines of my business to Jonas since his arrival to this country. He is indispensable to me now, especially since my only son, who helped me occasionally, is in the service of his country, stationed at North Platte, Nebr.

Lord willing, Jonas will bring his wife from Argentina, and we all shall continue to work together in my business, and make a worthwhile contribution to our community life.

It certainly will work undue hardships upon the family unit if he shall have to leave me after a 30-year search for each other. I am sure that this new happiness that he, Jonas, found in our American way of life, will make him ever so grateful, to this great land of ours.

In conclusion, I beg the Lord for your blessings,

Sincerely yours,

MAURICE DERKAY.

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WASHINGTON, D. C., *July 15, 1954.*

*To Whom It May Concern:*

DEAR SIR: I am very interested in assisting Mr. Jonas Dercautan in any way possible so that he might become a citizen of our great country. I have known him personally since his arrival in this country, May of 1953. Have nothing but good to say of him. If I might be of further help, please see fit to call on me.

Det. Sgt. PATRICK A. DUNIHAN,
*Metropolitan Police.*

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WASHINGTON, D. C., *July 16, 1954.*

Hon. PAT MCCARRAN,
*United States Senate, Washington, D. C.*

DEAR SIR: I have known Mr. Jonas Dercautan, for the past year, and have found him to be of good moral character and a fine person.

I feel that he will make a good citizen of this country.

Very truly yours,

Dr. HERMAN S. BRODIE.

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OHEV SHOLOM CONGREGATION,
*Washington, D. C., July 15, 1954.*

*To Whom It May Concern:*

I have been asked to provide reference for Mr. Jonas Dercautan, who I understand is seeking permanent admission to this country.

From the knowledge that is available to me, I would think that Mr. Dercautan is a person that should be permitted to remain in this land of ours.

Please feel free to call on me at any time for any additional information that you feel I could provide.

Very sincerely yours,

Rabbi ALBERT JOSEPH DAVIS.

ALBERT KING, FLOWERS,
*Washington, D. C., July 16, 1954.*

*To Whom It May Concern:*

I have known Mr. Jonas Dercautan for approximately 1 year, and during this time he has always appeared to be an honest and forthright person of excellent character.

Very truly yours,

ALBERT KING.

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GEORGE BORTMAN & SONS,
*Washington, D. C., July 15, 1954.*

*To Whom It May Concern:*

I have known Jonas Dercautan, now residing at 5509 33d Street NW., Washington, D. C., for the past 18 months.

I have had occasion during this period of time, to be together with him quite often. I have found him to be a fine, honest, upright person of good character. Knowing him as I have come to, I would not hesitate to give him any references he may desire or need.

Sincerely,

GEORGE BORTMAN.

In addition, the following letter from the beneficiary's physician was submitted in support of the bill:

WASHINGTON, D. C., *March 22, 1956.*

*To Whom It May Concern:*

This is to certify that Mr. Jonas Dercautan has been under my professional care since December 29, 1954. On the above date this patient suffered an acute coronary thrombosis and was hospitalized at the Garfield Memorial Hospital. Three weeks later he was discharged to the home of his brother to have complete bed rest.

Since that time he has been under my constant observation and care and, although he has made a fair recovery from the acute infarction, he continues to suffer from angina pectoris. His physical activity is markedly restricted and for this reason I have recommended that he does not attempt to return to his native land, as the stress and strain of such a move is certainly not in order at this time.

Sincerely yours,

LOUIS H. SHUMAN, M. D.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 832) should be enacted.

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Calendar No. 1903

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1883

# SHUN WEN LUNG (ALSO KNOWN AS VAN LONG AND VAN S. LUNG)

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany S. 2507]

The Committee on the Judiciary, to which was referred the bill (S. 2507) for the relief of Shun Wen Lung (also known as Van Long and Van S. Lung), having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Shun Wen Lung (also known as Van Long and Van S. Lung). The bill provides for an appropriate quota deduction and for the payment of the required visa fee.

### STATEMENT OF FACTS

The beneficiary of the bill is a 31-year-old native and citizen of China who was admitted to the United States on September 14, 1945, at Washington, D. C., as an accredited official of a foreign government. He was sent by the Chinese Nationalist Government to pursue his studies and he received a master's degree in political science. He presently resides in Washington, D. C., and is engaged in the restaurant business. The beneficiary's father was Governor of Yunnan Province from 1924 to 1945. Information is to the effect that he was completely cooperative with the United States Armed Forces.

The father is presently a Government official in Communist China, supposedly a puppet figure, since he did not have the power to save his own son, who was executed by the Communists for leading an insurrection against them. The beneficiary is unmarried and has no dependents.

A letter, with attached memorandum, dated January 13, 1956, to the then chairman of the Senate Committee on the Judiciary from the Commissioner of the Immigration and Naturalization Service with reference to the bill reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
*Washington, D. C., January 13, 1956.*

Hon. HARLEY M. KILGORE,
*Chairman, Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

DEAR SENATOR: In response to your request for a report relative to the bill (S. 2507) for the relief of Shun Wen Lung (also known as Van Long and Van S. Lung), there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Washington, D. C., office of this Service, which has custody of those files.

The bill would grant the alien permanent residence in the United States upon payment of the required visa fee. The bill also directs that one number be deducted from the appropriate immigration quota.

The beneficiary is chargeable to the quota for the Chinese.

Sincerely,

——— ———, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE SHUN WEN LUNG (ALSO KNOWN AS VAN LONG AND VAN S. LUNG), BENEFICIARY OF S. 2507

The beneficiary, a native and citizen of China, was born at Kunming, China, on July 14, 1924. He is unmarried and resides at 3801 Connecticut Avenue NW., Washington, D. C. The beneficiary attended school in China from 1934 to 1942. Thereafter he served as a lieutenant colonel in the Chinese Nationalist Army from 1943 to 1945 and in that capacity acted as liaison between the Chinese Nationalist Army and the United States Army. Subsequent to his entry into the United States in 1945, he attended the University of Wisconsin, Columbia University, and the University of South Carolina, where he received a master's degree in political science.

Since January 1955 the beneficiary has been engaged in the operation of the Peking Palace Restaurant, 3524 Connecticut Avenue NW., Washington, D. C., from which enterprise he draws $80 weekly.

The beneficiary's mother is deceased. His father, stepmother, and one brother, Shun-Der Lung, reside in Peiping, China. He has two other brothers who also reside abroad,

Shun Wu Lung, who resides in Formosa, and Shun Tsu Lung, who resides in Hong Kong. The beneficiary has one brother, Shing Lung, who was admitted to the United States as a student and resides in New York City, where he attends Columbia University. He also has one sister, Mrs. C. K. Chen, whose husband is a United States citizen. Mrs. Chen was admitted to the United States as a visitor. She resides in Jackson Heights, N. Y. The beneficiary has no one dependent upon him for support.

The beneficiary's father, Gen. Yun Lung, was Governor of Yunnan Province in China from 1924 to 1945; was second in command of the Chinese Army; and director of the headquarters of Generalissimo Chiang Kai-shek during World War II. The beneficiary states that shortly after the end of World War II, Generalissimo Chiang Kai-shek and his father became completely antagonistic toward each other; that his father was removed from his post as Governor of Yunnan Province by Generalissimo Chiang Kai-shek in 1945; that in 1948 his father moved to Hong Kong where he resided for about 1 year and that during General Lung's residence in Hong Kong he was elected to the position of deputy of the Communist Government and returned to Peiping, China, where he has since been a member of the Central People's Government Council of the Communist Government. The beneficiary states that this council, consisting of 57 members, is the supreme governing council of China, but that despite his father's position his father has never been a member of the Communist Party and is actually anticommunistic. The beneficiary states that the Communists made his father a member of that council due to his father's former prestige in China.

The beneficiary has stated that he is anticommunistic in his political views and that he has made known his beliefs and feelings concerning communism in communications addressed to his father in China and to his friends in the United States. The beneficiary further stated that if he were to be returned to China his father's high position would not protect him from persecution.

The records of the Immigration and Naturalization Service show that after the Communists gained control of the Government of China and until the outbreak of the Korean war in June 1950, the beneficiary had publicly urged his countrymen in the United States to return to their native land and that he had been the publisher of a periodical known as the Chinese News Letter which had been nationally distributed in the United States for that purpose. Furthermore, he was one of the sponsors of a Chinese meeting at Columbia University under the sponsorship of the Committee for a Democratic Far Eastern Policy. This organization has been declared by the Attorney General as coming within the purview of Executive Order 9835. The beneficiary states that his sponsorship of the meeting was entirely innocent; that he had never been a Communist and believes in democratic action and seeks return to China of the Nationalist

Government although not under the leadership of Generalissimo Chiang Kai-shek.

The beneficiary's assets in the United States are valued at approximately $25,000. These assets consist of an interest in a cooperative apartment in New York City, part ownership in the Peking Palace Restaurant, personal property, and cash. His assets abroad are valued at approximately $260,000. These assets consist of an interest in a tin mine in Malaya, cash and real estate in Hong Kong.

The beneficiary was admitted to the United States on September 14, 1945, at Washington, D. C., as an accredited official of a foreign government. In this connection it is indicated that the beneficiary was sent to the United States by the Chinese Government and that his stay in the United States was financed by that Government in order that he might pursue his studies at educational institutions in this country. The beneficiary abandoned his status as an official of a foreign government in 1947. On July 19, 1951, he filed an application for adjustment of his immigration status in accordance with the provisions of section 4 of the Displaced Persons Act of 1948, as amended. This application was thereafter denied upon the beneficiary's failure to sustain the burden of establishing fear of persecution were he to return to China. Following the denial of this application he submitted a motion requesting that his application be reconsidered. This motion was granted and the beneficiary's hearing on his application for adjustment of his immigration status is pending at this time.

Although the beneficiary is residing in the United States in an illegal status, deportation proceedings have not been instituted against him pending a final determination of his eligibility for adjustment of his immigration status.

Senator Herbert H. Lehman, the author of the bill, has submitted a number of letters and documents in connection with the case, among which are the following:

1. Name: Shun Wen Lung.

2. Address: 617 West 113th Street, New York City, N. Y., and care of Peking Palace, 3524 Connecticut Avenue, Washington, D. C.

3. Present occupation or means of support: Employed by the D. C. Catering Co., Inc., of Washington, D. C., at 3524 Connecticut Avenue.

4. Circumstances surrounding entry into the United States: I entered the United States on September 14, 1945, at Washington, D. C., in possession of an official passport issued by the Chinese Government. I was sent to the United States with the official assistance of the United States Government in order to pursue studies at educational institutions.

5. Present immigration status: At the present time am without status. My application to adjust my immigration status under section 4 of the Displaced Persons Act of 1948, as amended, was denied by the Immigration and Naturalization Service, New York City, on September 27, 1954, and the Assistant Commissioner, Inspections and Immigration Division, concurred in the decision

on December 15, 1954. My request for reconsideration was denied on March 4, 1955. I was ordered to leave the United States by June 1, 1955 (AR No. 6854848).

6. Specific reasons for desiring permanent residence status: I cannot return to China because I am opposed to the present Communist form of government; my life would be endangered and I would be persecuted because I believe in the democratic form of government and subscribe to the principles of the dignity of man and his individual rights as opposed to the totalitarian point of view that the state is supreme. I have resided in the United States for 10 years. I was 20 years old when I entered and am now 30 years of age. I have spent the most important 10 years of my life in the United States and have adopted and have become inculcated with the American way of life, and the United States today is my home and I desire to remain here permanently and become a United States citizen.

7. Have you ever been convicted of any offense under Federal or State law?

No.

8. Have you ever been engaged in any activity which might be interpreted or alleged to be injurious to the American public?

Positively not.

9. My nearest relatives residing in the United States are as follows:

Mrs. C. K. Chen (Cecile Lung) sister, married to C. K. Chen, who is a permanent resident of the United States. My sister has two children, both born in the United States and citizens of the United States of America, Jackson Heights, N. Y.

S. S. Lung, brother, who is without immigration status, Columbia University, New York City.

K. L. Lou, cousin, a citizen of the United States by naturalization, resides in Great Neck, N. Y. He is a former member of the United States Army during World War II.

K. C. Lou, cousin, resides in White Plains, N. Y. He is a graduate of the University of Michigan.

P. K. Li, cousin, a citizen of the United States by naturalization. Resides at Carmel, Calif. Presently serving in the United States Army and teaches Chinese at the Army Language School. He is a graduate of the University of California.

Mrs. Winston Sun (Miss P. L. Li), cousin, a permanent resident of the United States. She was educated at Mills College, Oakland, Calif. Her husband is a member of the United States Army.

B. Y. Lee, cousin, is a permanent resident of the United States. He was formerly the Chinese consul at San Francisco. He presently resides in San Francisco and is an insurance broker.

Relatives abroad: Father, Lung Yun and stepmother, and 1 kid brother, in Peiping; brother, Lung Shun Wu, in Formosa; 1 brother living in Hongkong.

10. Education and military record:

Lieutenant colonel in the Chinese Army from 1944 to 1945. I was liaison officer between Kunming Headquarters and the United States Army's 14th Air Force and Service of Supply, etc.

At the end of World War II, I was given an invitation order by the commanding general of the 14th Air Force, Gen. C. Chennault, to come to the United States.

I was a student at the University of South Carolina from 1947 to 1948 and received the degree of Master of Arts. I was elected a member of Pi Gamma Mu, the national social science honor society of the United States of America, in 1948.

I was a student and candidate for doctor of philosophy degree at the University of Wisconsin from 1949 to 1951.

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NEW YORK, N. Y., *June 5, 1955.*

Hon. HERBERT H. LEHMAN,
*Senator of the United States,*
*Washington, D. C.*

MY DEAR SENATOR: May I ask you to be good enough to intervene on behalf of Mr. Shun-wen Lung, a resident of New York City for many years, who is in danger of being deported from the United States.

I have been told that Mr. Lung applied under section 4 of the Displaced Persons Act of 1948 as a person who cannot return to mainland China for fear of persecution by the Communist regime and that his application has been denied.

I have known Mr. Lung's family for many years. His father was a long-time governor of the southwestern Province of Yunnan which borders on Burma. It was in that capacity that I came to know him, and we have had a good deal of political collaboration. He is not a Communist. In fact he fought against communism even though for some unfortunate reason he is now in Peiping. I believe he is virtually a prisoner.

As regards the young man himself I have also had numerous contacts with him and I have further obtained information about him from those who are associated with him. I have no reason to doubt at all that Mr. Lung is vigorously opposed to communism and to the present regime on mainland China. To compel him to return there is thus, in my opinion, to condemn him to persecution by the Communists. One of his brothers was killed by them. If his father had no power to prevent him from that fate, there is no reason to believe that he could be of any assistance to another son should he be found to be back in China. Another one of Mr. Lung's brothers narrowly escaped from the Communists and is presently residing in Formosa.

There is no need to remind ourselves that the Communists pursue a line of thought which is totally at variance with China's traditional views or with any normal rational view of human relationship. Should Mr. Lung be forced to return to China, the fact that he has been receiving higher education in this country and refusing to return would in itself, in my view, place him in immediate jeopardy irrespective of what his father may do for him. It is because of these considerations that I take the liberty of urging you to take all the necessary steps to provide him with the asylum which Mr. Lung so desperately needs in this country.

Yours sincerely,

LI CHUNG-JEN,
*Former Vice President and Acting President of the Republic of China.*

MONROE, LA., *July 1, 1955.*

Senator HERBERT LEHMAN,
*Senate Office Building,*
*Washington, D. C.*

DEAR SENATOR LEHMAN: I have just learned that you are preparing to introduce a private bill to authorize Mr. Shun-Wen Lung to remain in the United States.

During the war between Japan and China and the Second World War which began with the Japanese attack on Pearl Harbor, my headquarters was located at Kun Ming, Yunnan Province, China. Mr. Shun-Wen Lung's father was the governor of the province and it was necessary for me to seek his assistance on all matters relating to American personnel—such as the acquisition of land, the construction of occupational and nonoccupational buildings, the acquisition of land for new airfields, the social entertainment for our men, and even the regular supply of staple items of food—such as pork, chicken, fish, and rice. Over a period of 7 years, I found Governor Lung extremely cooperative and as a matter of fact, he granted every request I made of him although some requests for land were extremely unpopular with his people. He assisted me in setting up the Chinese-manned airplane-warning net which covered the entire Province of Yunnan and enabled us to avoid surprise by Japanese aircraft.

During this period I met all members of the governor's family. I became interested in Shun-Wen particularly because of his desire to go to the United States to complete his education and to learn the American way of life. I was able to offer him some slight assistance in obtaining his visa and have continued to take an active interest in his activities. I also have personal knowledge of the reasons which induced Governor Lung to go to Peiping where he is now held prisoner by the Communists and I know that he did not make the trip because he is a Communist.

I strongly urge the passage of a private bill to permit Shun-Wen to remain in the United States and I hope it will be possible for him to become an American citizen. I am convinced that he will make an excellent citizen because of his education, industry, experience, and his political views.

Thank you for your efforts on his behalf and with assurances of my high regard, I am,

Most sincerely,

C. L. CHENNAULT,
*Major General USAF, Retired.*

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JUNE 27, 1955.

Senator HERBERT H. LEHMAN,
*Senate Office Building, Washington, D. C.*

DEAR SENATOR LEHMAN: This is to express the hope that you will help Mr. Lung Shun-wen in his attempt to remain in this country and to become an American citizen.

The Immigration Service's reason for threatening Mr. Lung with deportation to the Far East is transparently ridiculous. I was well acquainted with his father, the old governor of Yunnan, when I was

serving in the 14th Air Force with General Chennault. Governor Lung was an immensely old-fashioned Chinese whose ideas belonged to an earlier and less complicated era. In those days, he was a good friend to America—no one gave the 14th Air Force more effective help, for example. If the old governor has now allowed himself to be enticed by the Chinese Communists, it is wholly because he had no notion what he was getting into, and was unable to help himself after he got into it.

The record is clear, moreover, that Governor Lung's sons have not been deceived in the same way. One of Lung Shun-wen's brothers was leading the resistance to the Communists in south China when he was caught and shot by them. Another refused to accompany the old governor back to China, and is still in Hong Kong. And the third had just escaped free China and was being feted by the Generalissimo in Taipeh when I was there this winter.

Finally, it seems to me that the record also shows that Lung Shun-wen is good citizenship material. I have no intimate personal acquaintance with him, but what he has accomplished seems to me to speak for itself. Few Americans can imagine the kind of atmosphere in which he was brought up, in a great Chinese feudal household. It is enough to say that he could hardly have been worse prepared to fend for himself when his father sent him to this country to college with the large allowance of a very rich man's son. The allowance ceased years ago. Since then Lung Shun-wen has been entirely on his own. And he has fended for himself in the best American tradition, finishing college, and then starting a small but successful business here in Washington. Surely this is the sort of man we want as a citizen.

Sincerely yours,

JOSEPH ALSOP.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 2507) should be enacted.

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Calendar No. 1904

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1884

# FRANK SEVCIK, JR., ALSO KNOWN AS FRANTISEK OR FRANCESCO SEVCIK

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany S. 2750]

The Committee on the Judiciary, to which was referred the bill (S. 2750) for the relief of Frank Sevcik, Jr., also known as Frantisek or Francesco Sevcik, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Frank Sevcik, Jr., also known as Frantisek or Francesco Sevcik. The bill provides for an appropriate quota deduction and for the payment of the required visa fee.

### STATEMENT OF FACTS

The beneficiary of the bill is an unmarried, 21-year-old native of Czechoslovakia who is now stateless. He last entered the United States at New York on June 15, 1952, when he was admitted as a student. It is stated that members of the faculty at the University of Michigan are giving him financial assistance and claim that he is an outstanding student. He has been employed part time on chemistry research by the Atomic Energy Commission at the university. After he and his parents suffered persecution first from the Nazis and then the Communists, they fled to Italy and later emigrated to Brazil,

where his parents presently reside. Information is to the effect that the beneficiary was required to learn four languages in order to continue his oft-interrupted education under the Nazis and Communists.

A letter, with attached memorandum, dated June 24, 1954, to the then chairman of the Senate Committee on the Judiciary from the Commissioner of the Immigration and Naturalization Service with reference to S. 2963, which was a bill introduced in the 83d Congress for the relief of the same alien, reads as follows:

JUNE 24, 1954.

Hon. WILLIAM LANGER,
*Chairman, Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

DEAR SENATOR: In response to your request of the Department of Justice for a report relative to the bill (S. 2963) for the relief of Frank (Frantisek) Sevcik, Jr., there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Detroit, Mich., office of this Service, which has custody of those files.

According to the records of this Service the correct name of the beneficiary is Francesco Sevcik.

The bill would grant the beneficiary permanent residence in the United States upon payment of the required visa fee and head tax. However, the Immigration and Nationality Act makes no provision for the payment of a head tax. It would also direct that one number be deducted from the appropriate immigration quota.

The alien is chargeable to the quota of Czechoslovakia.

Sincerely,

——— ———, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE FRANCESCO (FRANK) SEVCIK, JR., BENEFICIARY OF PRIVATE BILL S. 2963

This report relates to Francesco (Frank) Sevcik, Jr., born on December 9, 1934, at Batov, Czechoslovakia, who now claims to be stateless. Prior to entry into the United States, he last resided in Vila Galvao, Sao Paulo, Brazil. The beneficiary last entered the United States at the port of New York on June 15, 1952, when he was admitted as a student until June 14, 1953. He had never before resided in the United States. Deportation proceedings were instituted on March 29, 1954, under the act of May 26, 1924, as continued in section 405 of the Immigration and Nationality Act, in that he is a student who remained in the United States for a longer time than permitted under such act.

The beneficiary was informed on January 28, 1954, that due to his inability to have his Brazilian passport revalidated, his application for an extension of his temporary stay in the United States was denied and that he would be required to depart from the United States on or before March 15, 1954; that, failing to depart would make it necessary to enforce his departure.

The beneficiary attended school in his native village in Czechoslovakia, where he lived until 1947. From 1947 to 1951, he resided in Italy and attended a junior college in Torino, Italy, for 1 year. He also attended a junior college in Sao Paulo, Brazil, from September 1951 to June 1952. He entered the United States to attend the University of Michigan, Ann Arbor, Mich., where he enrolled in June 1952. He terminated his enrollment in September 1952 to enroll in the Ann Arbor, Mich., High School, from which he graduated in June 1953. He reenrolled at the University of Michigan, where he is now studying chemistry. Since February 1954 he has been employed 16 hours weekly on chemistry research by the Atomic Energy Commission at the University of Michigan. He has a savings account of $100 in the Ann Arbor National Bank. He has not engaged in any political activities at the University of Michigan, where he has received a yearly scholarship.

The alien is single and has no one dependent upon him who resides in the United States. His parents reside in Sao Paulo, Brazil.

Senator Pat McNamara, the author of the bill, has submitted a number of letters and documents in connection with the case, among which are the following:

LAW OFFICES

FRANCIS W. SCHILLING

ANN ARBOR, MICH., *July 29, 1955.*

Re Francesco Sevcik, Immigration and Naturalization Service No. T2464883

Hon. PATRICK V. MCNAMARA,
*United States Senate,*
*Washington, D. C.*

DEAR SENATOR MCNAMARA: This letter should be read in connection with letter of even date under separate cover, addressed to you by Neil Staebler, and in conference with Mr. Sam Jacobs, who has been filled in over the phone with reference to the subject matter.

The alien in caption is a native of Czechoslovakia whose family sought South American refuge from the Communist conquest; the family are still in Brazil, but the alien was admitted to the United States 3 years ago on a student visa for education here at family expense. His travel papers issued by Brazil consist of a so-called foreigners' passport, the conditions of which are that the same is valid for only 2 years, cannot be renewed, and the bearer cannot return to Brazil if he overstays the 2-year period. Shortly after his arrival in this country, Brazil invoked exchange regulations which prevented the family from continuing to finance his education. Local student authorities and individual faculty members at the University of Michigan were so strongly impressed by the alien's personality, diligence, and promise, that they have supplemented the scholarships he has earned with cash contributions so as to enable him to continue

his schooling here, which will conclude with a doctoral degree some 4 or 5 years hence.

Immigration Service regulations, which have the force of law, and there is no appeal to the courts, provide that no visa may be extended if there has been no extension of travel papers by the issuing foreign government: The alien has overstayed his foreigners' passport, which is not susceptible of renewal, at the advice of his mentors and patrons, in the belief that he would be permitted to finish his education and achieve permanent residence here, and eventually citizenship, via private bill S. 2963, 83d Congress; this proposed legislation expired without action upon adjournment. The Board of Immigration Appeals decided July 12, 1955, that under existing law he must be deported, with the alternative of voluntary departure, although under Brazilian law he is no longer admissible there because he did not return within the 2-year span of the travel document, and he will not be received elsewhere except Communist Czechoslovakia, for want of unexpired travel papers.

That the Board of Immigration Appeals decision in this case contains the language "We are aware of the appealing factors present in this case," is of no practical value to the alien, and the privilege of voluntary departure is of even less help when there is no place he can go. The operation of our law, however far afield of its intent circumstances, through no fault of his own, have taken this alien, now works upon him a hardship affecting his whole life, and almost incalculable in its extent: He cannot stay here and he cannot return to Brazil; he is without funds to continue his education elsewhere, since his scholarships and contributions to subsistence are here at the University of Michigan; all of the perseverance of the past 3 years in preparation for higher education will have to be sacrificed to economic necessity in whatever country he is received upon deportation, at that period in his life when the pursuit of his education is most practicable and feasible; the money that has been selflessly contributed by educators, underpaid themselves, in the belief that an outstanding scholastic talent could be developed, must go down the drain as well.

The Immigration and Naturalization Service has time and again observed in these "stateless" cases that the only remedy is the passage of a private bill. But there is not sufficient time for investigation and verification of all the facts in this case by the Senator, since the alien has been ordered out of the country by September.

In all the circumstances, it would seem a proper request that the alien's September voluntary departure date be extended a matter of 6 months to permit necessary investigation and review, as the Government can in no way be harmed thereby. Such a request should be addressed to District Director James W. Butterfield, Immigration Service, 3770 East Jefferson Street, Detroit 7, Mich., Attention: William E. Zimmer, detention, deportation, and parole section.

Respectfully,

FRANCIS W. SCHILLING.

UNIVERSITY OF MICHIGAN,
OFFICE OF THE PRESIDENT,
*Ann Arbor, March 23, 1956.*

Hon. JAMES O. EASTLAND,
*Chairman, Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

DEAR SENATOR EASTLAND: May I recommend to you Mr. Frank Sevcik, Jr., a junior in the college of literature, science, and the arts at the University of Michigan. The enclosed copy of a letter addressed by Prof. Merwin H. Waterman, of the University of Michigan, to the United States Immigration office, Detroit, under date of January 27, 1954, will introduce Frank Sevcik more specifically to you. The facts contained in Frank Sevcik's autobiography I have personally verified with Professor Waterman and with Mr. John Allison, counselor in the Ann Arbor High School.

In the last 2½ years, the only facts which have been added to Frank Sevcik's life story are those which are written in his record as a student at the university. The record of his activities, both in and out of the classroom, is an enviable one. It shows accomplishment of high caliber under trying conditions.

Be assured that the university already has accepted Frank Sevcik as a loyal son although he has not yet completed the requirements for his degree. All of us who have been concerned with his achievement wish him well and will appreciate all that you may be able to do on his behalf in making it possible for him to become an American citizen.

Sincerely yours,

HARLAN HATCHER.

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UNIVERSITY OF MICHIGAN,
*Ann Arbor, March 28, 1956.*

Hon. JAMES O. EASTLAND,
*Chairman, Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

DEAR SIR: I am writing to you in regard to Senate bill 2750, which will make it possible for Mr. Frank Sevcik to become an American citizen.

Mr. Sevcik has been under my direct supervision for about 1 year in his study toward a degree in physics. To the best of my knowledge he is the most promising and outstanding undergraduate in physics at Michigan at the present time. First, he is an all-A student in his course work. Second, he is doing an original research problem, in addition to his studies, which is rare for an undergraduate. Third, he has, on his own initiative, organized the other undergraduate physics students into a physics club, which meets regularly and discusses scientific advances.

Mr. Sevcik is a man of the highest personal integrity and will be a most loyal American citizen.

In this day of critical shortage of scientists it seems to me imperative that we keep a talented man like Frank Sevcik and make an American citizen of him. He is a potential national asset that we cannot afford to lose.

Respectfully yours,

H. R. CRANE,
*Professor of Physics.*

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 2750) should be enacted.

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Calendar No. 1905

84TH CONGRESS, 2d Session } SENATE { REPORT No. 1885

# BRIGITTE LECHNER WAGNER

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany S. 2801]

The Committee on the Judiciary, to which was referred the bill (S. 2801) for the relief of Brigitte Lechner Wagner, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE OF THE BILL

The purpose of the bill is to waive the excluding provision of existing law relating to one who has been convicted of crimes involving moral turpitude in behalf of the wife of a United States citizen veteran.

### STATEMENT OF FACTS

The beneficiary of the bill is a 30-year-old native and citizen of Germany, who presently resides in that country. In April 1952, the beneficiary was married in Germany, to Henry Wagner, an honorably discharged veteran of our Armed Forces. She has been denied a visa to enter the United States inasmuch as the record discloses that on September 24, 1947, she was found guilty of stealing 2 wristwatches and $6 in money from an American soldier. Another person subsequently confessed to having committed this theft. On July 9, 1950, the beneficiary was found guilty of having been found in illegal possession of $10 in occupation scrip. Without the waiver provided for in the bill, the beneficiary will be unable to join her citizen husband in this country.

A letter, with attached memorandum, dated March 28, 1956, to the chairman of the Senate Committee on the Judiciary from the Commissioner of Immigration and Naturalization with reference to the case, reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
*Washington, D. C., March 28, 1956.*

Hon. JAMES O. EASTLAND,
*Chairman, Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

DEAR SENATOR: In response to your request for a report relative to the bill (S. 2801) for the relief of Brigitte Lechner Wagner, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Detroit, Mich., office of this Service, which has custody of those files.

The bill would waive the provision of the Immigration and Nationality Act which excludes from admission to the United States aliens who have been convicted of a crime involving moral turpitude, or aliens who admit having committed such a crime, and authorize the issuance of an immigrant visa to the beneficiary if she is found to be otherwise admissible. It further provides that this waiver shall apply only to a ground for exclusion of which the Department of State or the Department of Justice has knowledge prior to the date of enactment of the bill.

Sincerely,

——— ———, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE BRIGITTE LECHNER WAGNER, BENEFICIARY OF S. 2801

Information concerning this case has been obtained from the beneficiary's husband, Mr. Henry Wagner.

The beneficiary, Brigitte Lechner Wagner, a native and citizen of Germany, was born on August 30, 1925. She was married in Germany on April 19, 1952, and presently resides in Augsburg, Germany.

The beneficiary is not employed and has no assets or income except that provided by her husband. She completed high school in Germany. Her parents are deceased.

According to Mr. Wagner, the beneficiary was refused a visa by the United States consul at Munich, Germany, in April 1952, apparently on the ground that she had been convicted of a crime involving moral turpitude. The committee may desire to request the Bureau of Security and Consular Affairs, Department of State, to secure information in this connection.

Mr. Henry Wagner, who was born on April 28, 1927, at Grosse Pointe, Mich., resides at 12939 East Jefferson Avenue, Detroit, Mich. He is employed as a heat treater by the Cadillac Motor Car Co. at Detroit, Mich., and receives wages amounting to $2.07 an hour. His assets consist of $1,000 in a savings account. Mr. Wagner served in the United States

Navy from June 26, 1942, until he was honorably discharged in January 1944. He enlisted in the United States Army in January 1946 and was honorably discharged in July 1947. Mr. Wagner has stated that he met the beneficiary in Augsburg, Germany, in 1946 and returned to Germany in April 1952 to marry her.

Senator Charles E. Potter, the author of the bill, wrote to the chairman of the Senate Committee on the Judiciary on March 9, 1956, in connection with the case:

UNITED STATES SENATE,
*Washington, D. C., March 9, 1956.*

Re S. 2801, Brigitte Lechner Wagner

Hon. JAMES O. EASTLAND,
*Chairman, Senate Committee on the Judiciary,*
*Washington, D. C.*

MY DEAR MR. CHAIRMAN: Submitted herewith documentation in support of the subject relief measure.

Mrs. Wagner is the wife of Mr. Henry Wagner, 14345 East Canfield, Detroit, Mich. Mr. Wagner married Elfriede Brigitte Lechner while serving with our Armed Forces in Germany. Mrs. Wagner is inadmissible to the United States under section 212 (a) (9) of the Immigration and Nationality Act by reason of her conviction on September 24, 1947, by a United States military government court at Augsburg, Germany, of stealing 2 wristwatches and $6 in money from an American soldier.

The affidavit attached, executed July 29, 1955, by Mrs. Margareta Schaffitel, attests that she committed the theft, not Mrs. Wagner, but the latter agreed to admit being an accomplice in order to avoid embarrassment to Mrs. Schaffitel's parents.

In addition to the court records of the above-mentioned conviction, our Munich consul—although not mentioned in his letter to me of June 30, 1955—submitted records revealing Mrs. Wagner was found guilty on July 9, 1951, under article I of High Commission Law No. 6 in that she on or about September 8, 1950, was in illegal possession of $10 in occupation scrip. The court's findings of fact, herewith, reveal the circumstances in this instance which indicate only the fact that she accepted the scrip in exchange for German money.

It is hoped that your committee will take into account the minor nature of the convictions related above and approve this relief bill which would allow Mrs. Wagner's joining her husband in this country.

Sincerely yours,

CHARLES E. POTTER,
*United States Senator.*

The documents referred to in the above letter read, in part, as follows:

THE FOREIGN SERVICE OF THE UNITED STATES OF AMERICA,
AMERICAN CONSULATE GENERAL,
*Munich, Germany, June 30,1955.*

Hon. CHARLES E. POTTER,
*United States Senate, Washington, D. C.*

MY DEAR SENATOR POTTER: I have received your letter of June 2, 1955, concerning the immigration case of Mrs. Brigitte Wagner, the

wife of Mr. Henry Wagner of 14345 East Canfield Street, Detroit, Mich. Mrs. Wagner is inadmissible to the United States under section 212 (a) (9) of the Immigration and Nationality Act.

Prior to her marriage Mrs. Wagner was convicted on September 24, 1947, by a United States military government court at Augsburg of stealing 2 wrist watches and money ($6 and reischsmarks 20) from an American soldier, and sentenced to imprisonment for 8 months.

A certified copy of the court records in the case are being forwarded to the Department of State for transmission to you in view of your statement that you are considering the sponsorship of a private bill in Mrs. Wagner's behalf.

Sincerely yours,

J. RAYMOND YLITALO,
*American Consul.*

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DETROIT 26, MICH., *November 8, 1955.*

Re a private bill, Mrs. Brigitte Wagner

Miss MARIAN S. JENSEN,
*Secretary, Office of Senator Charles E. Potter,*
*Senate Building, Washington, D. C.*

DEAR MISS JENSEN: Thank you very much for your letter of October 21, 1955, with enclosures.

From the said documents you made me it appears to have been only a very minor offense which was committed in 1950. The penalty imposed was 10 deutschemarks, which is equivalent to about $2.50.

I am herewith enclosing certified original and English translation of the affidavit of Mrs. Margareta Schaffitel, nee Schneid, which was made on August 3, 1955, as you will see therefrom the offense for which Mrs. Wagner was sentenced in 1947 was not committed by her at all.

In addition to the legal aspects I would like to point out the human side of the matter. Mr. Henry Wagner is an honorably discharged World War II veteran and American citizen. He has now been separated from his wife for about 3 years. He cannot and does not want to give up his country and home in order to join and live with his wife in Germany. On the other hand, his wife has not yet been able to come to her husband in this country and live a normal and happy married life.

It appears that the private bill will be the only remedy to help these unfortunate people to become reunited again.

I, therefore, respectfully ask the honorable Senator to use his good offices in behalf of the parties concerned.

Thanking you very much for your kind cooperation, I remain,

Sincerely yours,

JACK STATTMANN,
*Attorney and Counselor.*

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 2801) should be enacted.

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Calendar No. 1906

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1886

# YUE YIN WONG (ALSO KNOWN AS WILLIAM YUEYIN WONG)

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany S. 2834]

The Committee on the Judiciary, to which was referred the bill (S. 2834) for the relief of Yue Yin Wong (also known as William Yueyin Wong), having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Yue Yin Wong (also known as William Yueyin Wong). The bill provides for an appropriate quota deduction and for the payment of the required visa fee.

### STATEMENT OF FACTS

The beneficiary of the bill is a 26-year-old native and citizen of China, who last entered the United States on May 18, 1946, as a visitor. On November 9, 1948, his status was changed to that of a student. The beneficiary graduated from high school in 1950, and in 1955, received his bachelor of arts degree. He is presently attending a theological seminary. The beneficiary and his family left China in 1937, because of the Sino-Japanese war, and went to the Solomon Islands. During World War II, the beneficiary lived in hiding, until rescued by the Allies. At the age of 13, the beneficiary and 3 brothers went to Guadalcanal to work for the United States Army. The beneficiary was assigned as an orderly to Col. Alexander Smith, and served

for 33 months. At the time of the beneficiary's entry into this country, he was sponsored by Colonel Smith. The beneficiary has one brother residing in this country.

A letter, with attached memorandum, dated March 26, 1956, to the chairman of the Senate Committee on the Judiciary from the Commissioner of Immigration and Naturalization with reference to the case, reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
*Washington, D. C., March 26, 1956.*

Hon. JAMES O. EASTLAND,
*Chairman, Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

DEAR SENATOR: In response to your request for a report relative to the bill (S. 2834) for the relief of Yue Yin Wong (also known as William Yueyin Wong), there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Buffalo, N. Y., office of this Service, which has custody of those files.

The bill would grant the beneficiary permanent residence in the United States upon payment of the required visa fee. It would also direct that one number be deducted from the appropriate immigration immigration quota.

The beneficiary is chargeable to the quota for Chinese persons.

Sincerely,

J. M. SWING, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE YUE YIN WONG (ALSO KNOWN AS WILLIAM YUEYIN WONG) BENEFICIARY OF S. 2834

The beneficiary, Yue Yin Wong, also known as William Yueyin Wong, who was born August 16, 1929, is a native and citizen of China. He has never married. Mr. Wong attended elementary schools in Canton, China, and Montpelier, Vt. He was graduated from Montpelier High School in 1950 and from the University of Vermont with a bachelor of arts degree in June 1955. He is now a student at the Hartford Theological Seminary in Hartford, Conn.

During his stay in the United States Mr. Wong has resided with and been assisted by Col. Alexander J. Smith, of Montpelier, Vt., who is director, veterans' affairs, State of Vermont. During summer vacations and while attending school he has worked at various jobs as a waiter and kitchen worker. He is now employed part time in church work connected with his theological studies, from which he earns about $50 a month. Mr. Wong has assets valued at about $500, of which $300 is in savings and the remainder is in personal effects. His parents, 1 brother, and 2 sisters reside in Munda, New Georgia, British Solomon Islands. One brother resides in Lincoln, Nebr.

The beneficiary last entered the United States at San Francisco, Calif., on May 18, 1946, and was admitted as a visitor for pleasure for a period of 1 year. He was granted several extensions of stay and on November 9, 1948, a change of status to that of a student was authorized. His last extension of stay as a student expired on May 31, 1955. Deportation proceedings were instituted against him on June 15, 1955, on the ground that he failed to comply with his status as a nonimmigrant student. He was found deportable on this ground. An appeal to the Board of Immigration Appeals was dismissed on September 30, 1955.

The beneficiary registered under the Selective Service Act on September 24, 1951, and was classified as 4–F. The selective-service records show that he was so classified because of his light weight, low blood pressure, and deficiencies in vision and hearing.

Senator George D. Aiken, the author of the bill, wrote to the then chairman of the Senate Judiciary Committee on January 25, 1956, as follows in support of the bill:

UNITED STATES SENATE,
*January 25, 1956.*

Hon. HARLEY M. KILGORE,
*Chairman, Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

DEAR HARLEY: On January 5, 1956, I introduced a private bill, S. 2834, for the relief of Yue Yin Wong (also known as William Yueyin Wong).

I feel very strongly that evidence in his case merits careful consideration.

Mr. Wong has lived in this country for 10 years. Originally from Canton, China, he moved with his family to the Solomon Islands in 1937 because of the Sino-Japanese War. After Pearl Harbor he lived in hiding from the Japanese until rescued by the Allies. At the age of 13 he and 3 brothers went to Guadalcanal to work for the United States Army. He was assigned as an orderly to Col. Alexander J. Smith, of Montpelier, Vt., and other Army officers and served for about 33 months. In May 1946, sponsored by Colonel Smith, he came to the United States as a visitor.

Colonel Smith and his wife became extremely fond of this youth, admired his character and could see that he was a boy of exceptional potentialities. They gave him a home and helped him obtain an education.

As a victim of the Asiatic wars his only real home has been with the Smiths. All of the educational advantages he now enjoys were gained in our public schools and the University of Vermont. This training has equipped him above all things for citizenship in the American democracy as this is the basic aim of our public school system. I feel keenly that he should be allowed to assume his place as a citizen who has earned the right to share our American responsibilities and privileges. I would not say these things if Mr. Wong had not received enthusiastic support from his many friends in Vermont.

It seems to me that to deport Mr. Wong would impose extreme hardship of readjustment on a young man thoroughly educated in our American traditions. I do not feel that he should be forced to return.

Inasmuch as Mr. Wong has been denied his application for suspension of deportation, but has been granted a stay pending the outcome of this bill, I will appreciate it if everything possible is done to expedite consideration of S. 2834 during this session.

Sincerely yours,

GEORGE D. AIKEN.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 2834) should be enacted.

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Calendar No. 1907

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1887

# ANTONIA SOULIS

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany S. 2838]

The Committee on the Judiciary, to which was referred the bill (S. 2838) for the relief of Antonia Soulis, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE OF THE BILL

The purpose of the bill is to waive the excluding provision of existing law relating to one who has engaged in prostitution in behalf of the wife of a United States citizen veteran.

### STATEMENT OF FACTS

The beneficiary of the bill is a 33-year-old native and citizen of Italy, who presently resides in that country. On June 4, 1954, she was married in Italy to William C. Soulis, an honorably discharged veteran of our Armed Forces, and a citizen of the United States. The beneficiary has been denied a visa to enter the United States inasmuch as information was to the effect that she had engaged in prostitution. Without the waiver provided for in the bill, the beneficiary will be unable to join her citizen husband in this country.

A letter, with attached memorandum, dated March 28, 1956, to the chairman of the Senate Committee on the Judiciary from the Commissioner of Immigration and Naturalization with reference to the case, reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
*Washington, D. C., March 28, 1956.*

Hon. JAMES O. EASTLAND,
*Chairman, Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

DEAR SENATOR: In response to your request for a report relative to the bill (S. 2838) for the relief of Antonia Soulis, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the New York, N. Y. office of this Service, which has custody of those files.

The bill would waive the provisions of the Immigration and Nationality Act which exclude from admission into the United States aliens who have engaged in, or who have derived benefits from, prostitution or other immoral activities, and would authorize the alien's admission for permanent residence if she is otherwise admissible under that act. The bill further provides that this exemption shall apply only to a ground for exclusion of which the Department of State or the Department of Justice had knowledge prior to the enactment of this act.

Sincerely,

——— ——— *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE ANTONIA SOULIS, BENEFICIARY OF S. 2838

Information concerning this case was obtained from William C. Soulis, the beneficiary's husband.

Antonia Soulis, nee Salamon, who was born on August 27, 1922, is a native and citizen of Italy. She married Mr. Soulis in that country on June 4, 1954. The beneficiary resides in Italy. Her husband furnishes $100 a month to provide for her needs. The beneficiary's father is a resident and citizen of Italy. Her three brothers are citizens and residents of the United States.

In April 1955 Mrs. Soulis applied at the United States consulate at Genoa, Italy, for a visa to enter the United States for permanent residence. Information furnished by her husband indicates that she was refused a visa because of offenses involving prostitution.

Mr. Soulis, a 28-year-old native United States citizen, served in the United States Army for 7 years, which included 5 years' overseas service. He resides at 82–41 135th Street, Kew Gardens, N. Y. He is employed as an assistant traffic manager by Airkem, Inc., in New York City, and receives a salary of $350 per month. His assets consist of cash savings of $150 and furnishings valued at $500.

Senator Hubert H. Humphrey, the author of the bill, wrote to the then chairman of the Senate Judiciary Committee on February 25, 1956, in support of the bill, as follows:

UNITED STATES SENATE,
*Washington, D. C., February 25, 1956.*

Hon. HARLEY M. KILGORE,
*Chairman, Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

DEAR SENATOR KILGORE: In support of the private bill I have introduced for the relief of Mrs. Antonia Soulis, S. 2838, I am enclosing herewith a letter to me from her husband, Mr. William C. Soulis, an American citizen, and other letters from Mr. Soulis' friends and acquaintances who readily attest to his good character and responsibility.

With regard to Mrs. Soulis herself, her husband's letter, I feel, describes in a more adequate fashion than I am able to the circumstances of her situation, her character, and his deep regard for his wife.

I am sincere in my urging favorable action by the Committee on the Judiciary and the Congress to permit a waiver of the provisions of section 212 (a) (12) of the Immigration and Nationality Act and to allow Mrs. Soulis to join her husband in the United States.

Sincerely yours,

HUBERT H. HUMPHREY.

The following letter from the husband of the beneficiary of the bill, is among the supporting documents submitted by Senator Humphrey:

KEW GARDENS, LONG ISLAND, N. Y., *May 9, 1955.*

Hon. Senator HUBERT H. HUMPHREY,
*United States Senate, Washington, D. C.*

DEAR SENATOR HUMPHREY: Your quick reply to my letter last week informing you of my wife's visa being denied was certainly a lift to my sinking morale. I am willing to tell you all the facts as I see them and I hope you will get a clear picture of my position. This story is not a pleasant story and I have never told anyone about it. However, there may be a chance that you will want to help and therefore I am not ashamed to relate the reason why my wife has been refused permission to come to the United States.

Although I have no official word yet, my wife has indicated that the reason is what we have been fearing for quite some time. It is the reason we could not be married while I was in the Army in Trieste. My wife was arrested on prostitution charges in Trieste on more than one occasion. It is difficult to confess the circumstances under which something like that can happen. I spared my wife the whole story when she confessed to me and now I will have to wait for word from the American consul with you to see how serious they considered it. I did get to know enough so that if I did not love her I would never have married her. Even loving her I would have been justified in leaving her. It is just that I love her so deeply and have seen so much bad in the world that I could forgive her and did. I have found, to my great satisfaction, that she is indeed a good wife and that I will never be sorry I married her. And I found that all the things bad about her could not be so bad that she should be denied the opportunity to live with me and help me establish a family here in the United States.

She did not have a good family life. When she was about 6 her mother died, and as far as I know she got no comfort from her father. I know her education suffered because of his lack of interest in her.

At some time during her teens she began living with a cousin's family in a large house. This man was with the Fascist government and was quite wealthy. The memory of this period of her life seems to be a good one. She was well cared for and was happy. But suddenly the war was all mixed up, with Italy surrendering to the Allies in the south and still being occupied by the Germans in the north. This was the town of Fiume in the northern part of the territory of Trieste. The Jugoslavs were driving toward the town and everyone was fleeing toward the city of Trieste. My wife arrived there alone and bewildered. Her stories of that period are clear enough to me to indicate that she didn't quite understand anything that was going on. But she was a young girl in a city newly occupied by American soldiers. She fell under the charm that so many American boys have thrown around the world. I certainly do not like to think about this very often. The man is from New England and I know his address. He was going to marry her, he said. After he left for the United States he wrote once or twice and that was the end of it. Once again my wife was alone.

By this time some of her family was in the city. She was able to get work through a cousin and held many jobs up to the time I met her. She worked in English messhalls and as a maid to American families. She always was willing to work. Even after we were married she has never asked me for money. She is ambitious and not lazy nor careless about her home. I have never known anyone who had the fortune of having my wife as a maid who was not sorry when they left Trieste or when she left their employ.

During the time I knew her in Trieste we had a few dates together in the American Army clubs or in the bars of Trieste where many GI's met their girl friends. We met and walked in the parks or the quiet streets. Or we sat and talked. She does not drink and only smoked because I did. When I gave up smoking 2 years ago she did also. I soon found myself giving up drinking early after I met her. If I ever arrived at our meeting place with beer on my breath she did not hide her displeasure. One night we were out walking on a dark street later than usual. A police car pulled alongside us and the police demanded to see my girl friend's identification. After checking her card they told her to get in the car. I protested and was told it was none of my business. I spent a few hours phoning my company commander and the chaplain, who both told me that if nothing was wrong she would be released in the morning. She was released the next day. Another time she was visiting me out of the city where I was attending the Trieste 351st Infantry NCO Academy from which I graduated as an honor student. I had given her money for a taxi because it was late and a long way home. I saw her off in the cab and a week later found that she had again been arrested. The police had watched me give her money and had stopped the cab.

The visa was not refused because of these incidents I am sure. I am telling you about them to illustrate the situation in Trieste at that time. The police were very strict about girls with American soldiers late in the evening. They were good police, efficient and well-disciplined. But they were not always right when they picked up a girl on suspicion. The record does not tell the whole story. I do not mean to imply that the American consul in Genoa did not use good judgment in his decision. He is probably justified in thinking as he does.

However, I do not feel that he knows what I am telling you in this letter. The record will tell the story in cold facts and I can't say that I will welcome the chance to see it.

I am asking that in some manner my wife may be forgiven as I have forgiven her. She was one among many such girls who were left behind by America's noble young soldiers. Many recovered and are now married and in the United States. For many others there is no hope. I know my wife would never have ended up the way some of those women did. I know this because of the pride and character hidden in her that is evident only after intimate companionship. This does not alter the fact that she did do some things that caused the record to look as though she were a prostitute. Is a girl who is young and under the influence of a mixed-up world a prostitute if she has the ability to rise above the evil and become a good woman and the wife of a good man?

When I met her I was a private in the Infantry after almost 5 years in the Army. I did not have a bad record, but I was not a good soldier. I had been reduced in grade once and voluntarily reduced. I was not happy. Last April I left the Army with an honorable discharge, a letter of commendation for my good job as a battalion sergeant major, and the rank of sergeant, first class. I was given an efficiency rating of superior. All this I feel was caused by the influence my wife has had on my life. My mother can testify to the lonely and mixed-up life I led before meeting my wife. I will never tell this story to my mother because she has the impression that I married an angel.

I sincerely hope that you will help me in some way. I feel sure that something can be done if you agree with me that my wife should be forgiven for the record. A long time ago I made the decision that if she were not allowed entry to the United States which I so proudly served as a soldier, then I would leave. This is a hard thing to do, but my love for my wife is that great.

Sincerely,

WILLIAM C. SOULIS.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 2838) should be enacted.

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Calendar No. 1908

84TH CONGRESS, 2d Session } SENATE { REPORT No. 1888

# DR. SHOU SOON KWONG

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany S. 2843]

The Committee on the Judiciary, to which was referred the bill (S. 2843) for the relief of Dr. Shou Soon Kwong, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Dr. Shou Soon Kwong. The bill provides for an appropriate quota deduction and for the payment of the required visa fee.

### STATEMENT OF FACTS

The beneficiary of the bill is a 29-year-old native of Hong Kong of the Chinese race, who last entered the United States on August 19, 1948, as a student. He was awarded a bachelor of science degree by the University of California and a doctor of philosophy degree by Purdue University. The beneficiary is employed as a chemical engineer by Archer-Daniels-Midland Chemical Co., and the president of that firm states that the beneficiary is an outstanding scholar and that it would be extremely difficult to replace him.

A letter, with attached memorandum, dated March 29, 1956, to the chairman of the Senate Committee on the Judiciary from the Commissioner of Immigration and Naturalization with reference to the case, reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
*Washington, D. C., March 29, 1956.*

Hon. JAMES O. EASTLAND,
*Chairman, Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

DEAR SENATOR: In response to your request for a report relative to the bill (S. 2843) for the relief of Dr. Shou Soon Kwong, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the St. Paul, Minn., office of this Service, which has custody of those files.

The bill would grant the beneficiary permanent residence in the United States upon payment of the required visa fee. It would also direct that one number be deducted from the appropriate immigration quota.

The beneficiary is chargeable to the quota for Chinese persons.

Sincerely,

——— ———, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE DR. SHOU SOON KWONG, BENEFICIARY OF S. 2843

The beneficiary, Dr. Shou Soon Kwong, a native of Hong Kong of the Chinese race, was born on July 4, 1926. He claims to be a citizen of China because of his racial ancestry. He has never married and resides at 1770 Bryant Avenue S., Minneapolis, Minn.

The beneficiary is employed as a chemical engineer. He was awarded a bachelor of science degree by the University of California and a doctor of philosophy degree by Purdue University. His present income is $575 a month and he has $2,000 in savings. The beneficiary's parents and sister reside in Hong Kong. He has an uncle and two cousins residing in the United States.

The beneficiary entered the United States at San Francisco, Calif., on August 19, 1948, as a student. Extensions of stay were authorized to August 18, 1954. His application for adjustment of status to a permanent resident under the provisions of the Refugee Relief Act of 1953, as amended, was denied because he could not establish inability to return to Hong Kong. A visa petition to establish first preference quota status in his behalf was approved on December 27, 1955. Deportation proceedings were instituted on January 8, 1956, on the ground that he had remained in the United States for a longer period than permitted.

The beneficiary served as a second lieutenant in the Chinese Army from 1945 to 1946. He is not registered under the Universal Military Training and Service Act.

Senator Hubert H. Humphrey, the author of the bill, wrote to the then chairman of the Senate Judiciary Committee on February 25, 1956, as follows in connection with the bill:

UNITED STATES SENATE,
*Washington, D. C., February 25, 1956.*

Re S. 2843, Dr. Shou Soon Kwong

Hon. HARLEY M. KILGORE,
*Chairman, Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

DEAR SENATOR KILGORE: In support of S. 2843, for the relief of Dr. Shou Soon Kwong, I wish the members of the Senate Committee on the Judiciary to be apprised of the following facts that have been brought to my attention.

Dr. Kwong's parents were born and lived in China until about 2 years before his birth when they moved to Hong Kong. A few months after his birth on July 4, 1926, they returned to Shanghai, China, where Dr. Kwong remained until 1945 when he joined the Chinese Army.

Dr. Kwong entered the United States as a student in 1948. Because of events subsequent to his departure from China he was unable to return, and continued to further his education here in the United States. In 1954, Dr. Kwong applied for adjustment of his immigration status under section 6 of the Refugee Relief Act of 1953. His application was denied by the Immigration and Naturalization Service on the ground that he is able to return to the place of his birth, Hong Kong. No consideration was given to the fact that Dr. Kwong has had, for all practical purposes, no residence in Hong Kong and that he has been a resident and citizen of China virtually his entire life prior to coming to the United States.

I am attaching a number of letters and statements showing the steps Dr. Kwong was forced to take to obtain a passport to enter the United States and to remain here. In addition, there are affidavits from his employer, his colleagues and associates, attesting to his character, his technical training and skills in the field of chemical engineering, an area in which trained persons are urgently needed in the United States.

In my judgment, the granting of permanent residence to Dr. Kwong would be substantially beneficial to our Nation's economy and welfare. On this basis, and because I strongly feel we cannot afford to lose the services of skilled scientists in our battle to remain in the forefront of scientific and technological advances, I urge the favorable consideration of S. 2843.

Sincerely yours,

HUBERT H. HUMPHREY.

The enclosures referred to in the above letter read, in part, as follows:

ARCHER-DANIELS-MIDLAND CO.,
*Minneapolis, Minn., January 3, 1956.*

*To Whom It May Concern:*

GENTLEMEN: James C. Konen, being first duly sworn, deposes and says that he is vice president in charge of research for Archer-Daniels-Midland Co., Minneapolis, Minn.; that he is a citizen of the United

States of America; that he resides at 4913 East Sunnyslope Road, Minneapolis, Minn.; that he has personally known and has been acquainted in the United States with Dr. Shou Soon Kwong since March 16, 1954; that it is his belief that the services of the beneficiary, Dr. Shou Soon Kwong, are of substantial benefit to the welfare of the United States.

The affiant further states that Mr. Joseph W. Barker, president of Sigma Xi, honorary chemical society, stated in the July 1955, American Scientist: "* * * Seldom has the need for a wealth of superbly trained scientists been as necessary to the continued welfare of our country as it is now and as it will be for the immediate future. It is alarming then, that in the United States the percentage of the total collegiate population represented by the scientists and engineering students has fallen from 17 to 10 percent in recent years and is still tending downward. This is a matter of increasing concern to those dealing directly with the problems of scientific manpower. It must also be alarming to all research scientists, to our industrialists and to the country at large * * * As of this June, we will graduate from colleges about 4,000 fewer engineers and scientists than are necessary just to replace the deaths and retirements of industrially employed scientists and engineers alone. The growth increment in our industries has been neglected in these figures, so that actually there is a shortage of more nearly 10,000. And, if we add the scientist and engineering teaching positions in colleges and high schools, the shortage runs well upward to 30,000 * * *."

Circular No. 421 of the United States Department of Health, Education, and Welfare, Engineering Enrollments and Degrees, 1954, shows that only 133 chemical engineers were graduated last year at the doctor of philosophy level in the entire United States. The May 30, 1955, issue of Time magazine quotes Assistant Defense Secretary, Donald Quarles, as saying that the United States is currently in the grip of a shortage of trained engineers, which is "potentially a greater threat to national security than any aggressor or weapons known."

The affiant further says that in addition to his academic background, Dr. Kwong also has over a year's experience in industrial research and development work. In view of the critical shortage of technically trained men in the field in which Dr. Kwong is trained, we feel without question, that it is to the interests of the Nation's economy and the welfare of the United States to retain his services in this country.

Dr. Kwong was a brilliant honor and scholarship student * * * with the few doctors of philosophy in chemical engineering available, he would be extremely difficult to replace. The research and development work he has been doing for Archer-Daniels-Midland Co. is of critical and extreme importance to us. He is currently an important part of an engineering team doing process development work on new products. The bulk of this work is leading to new plant design in the field of chemical products.

Archer-Daniels-Midland Co. is the largest processor of linseed oil and meal; one of the three major crushers of soybeans; was a pioneer in the alphatic chemical field and produced the first hydrogenated fatty acids for commercial use; the largest processor of flax fiber (used

to make cigarette paper, United States currency, and airmail stationery); is the fifth largest miller of flour; is the largest manufacturer of soy flour; is one of the largest processors of resins and of saturated and unsaturated fatty acids; is the largest supplier of sperm oils. We market over 850 standard products, some of which are used by every segment of industry in the United States.

The products of Archer-Daniels, Midland Co. are essential to our national economy and, in case of a national emergency, are extremely essential to the welfare of the United States.

J. C. KONEN, *Vice President.*

Subscribed and sworn to before me this 3d day of January 1956.

[SEAL] WILSON S. BRYAN,
*Notary Public, Hennepin County, Minn.*

My commission expires March 24, 1956.

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
*New Post Office Building, St. Paul, Minn.*

STATEMENT AS TO PERIOD OF TIME REQUIRED TO BECOME SKILLED IN THE FIELD OF WORK TO BE PERFORMED BY THE BENEFICIARY

STATE OF INDIANA:
*County of Tippecanoe, ss:*

E. W. Comings, being first duly sworn, deposes and says that he is the head of the school of chemical and metallurgical engineering at Purdue University and that it takes a minimum of 4 years at most colleges and universities to become skilled as a chemical engineer at the bachelor level. To gain a doctor of philosophy degree in chemical engineering at most institutions, it requires at least 3 and sometimes 4 more years. This means that 7 or 8 years of study are required to develop an individual with the qualifications of Dr. Shou Soon Kwong.

Affiant further states it is to the interest of our national economy that a man of Dr. Kwong's attainments be retained in this country where his achievements can be made available to the American public.

E. W. COMINGS,
*Head of School of Chemical and Metallurgical Engineering,*
*Purdue University.*

Subscribed and sworn to before me this —th day of December 1955.

[SEAL] MARY GRACE GAGEN.

My commission expires July 16, 1957.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 2843) should be enacted.

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Calendar No. 1909

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1889

# ETHEL KALLINS

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany S. 2874]

The Committee on the Judiciary, to which was referred the bill (S. 2874) for the relief of Ethel Kallins, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Ethel Kallins. The bill provides for an appropriate quota deduction and for the payment of the required visa fee.

### STATEMENT OF FACTS

The beneficiary of the bill is a 63-year-old native of Russia and citizen of Great Britain, who last entered the United States on January 12, 1955, as a visitor. The beneficiary is a widow and resides with her only son, who is a lawful permanent resident of this country, as is his wife and minor child. The beneficiary is supported by her son.

A letter, with attached memorandum, dated March 27, 1956, to the chairman of the Senate Committee on the Judiciary from the Commissioner of Immigration and Naturalization with reference to the case, reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
*Washington, D. C., March 27, 1956.*

Hon. JAMES O. EASTLAND,
*Chairman, Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

DEAR SENATOR: In response to your request for a report relative to the bill (S. 2874) for the relief of Ethel Kallins, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Miami, Fla., office of this Service which has custody of those files.

The bill would grant the beneficiary permanent residence in the United States upon payment of the required visa fee. It would also direct that one number be deducted from the appropriate immigration quota.

As a quota immigrant the beneficiary would be chargeable to the quota for Russia.

Sincerely,

J. M. SWING, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE ETHEL KALLINS, BENEFICIARY OF S. 2874

The beneficiary, Ethel Kallins, nee Sirkis, was formerly Ethel Kalnitzky, which name was changed by assumption to Ethel Kallins. She was born on May 27, 1892, in Odessa, Russia, and is now a citizen of England. She is the widow of Wolko Kallins, who died on March 23, 1955. This was her only marriage. She fled from Russia with her husband and young son during the Russian Revolution. They took up residence in England in 1921. The beneficiary departed from there in June 1955 and has since that time resided with her son, Emile Kallins, in Miami Beach, Fla. She is supported by her son.

The beneficiary has never been gainfully employed. She has approximately $300 on deposit in a bank in Nassau, Bahamas, and a refundable return-trip ticket to England valued at $300. She has the equivalent of a high-school education. Her only close relative residing in the United States, other than her son, is an uncle, Abe Sierkese, who is a prominent merchant in St. Petersburg, Fla. She has no close family relations residing in England. However, she has two brothers who reside in Buenos Aires, Argentina.

The beneficiary entered the United States on January 12, 1955, at Miami, Fla., as a temporary visitor. She obtained extensions of her temporary admission, the last of which was to July 12, 1956. Deportation proceedings were instituted against her on March 7, 1956, on the ground that she had failed to maintain the nonimmigrant status under which she was admitted. The outcome of these proceedings has not as yet been determined. She applied for an immigrant visa

at the American Embassy in London, England, in 1954 and was told that the quota to which she is chargeable would not be open for about 5 years.

Her son, Emile Kallins, was born on March 16, 1911, in Odessa, Russia, and is a citizen of England. His wife, Eva Freedman, is a citizen of England. They have one child, Roger Kallins, who was born on October 29, 1939, in London, England. This family was admitted to the United States for permanent residence on April 15, 1954, at New York, N. Y.

Her son, Emile Kallins, is a high-school graduate. He is employed in Miami, Fla., as a radio technician which trade he learned as an apprentice in England. His salary is $70 a week. His wife is employed as a beautician in Miami Beach, Fla. Her earnings average approximately $65 a week, which includes tips. Their cash savings amount to $300. Their son is a student and dependent upon them for his support. Emile Kallins was inducted into the Royal Air Force on September 4, 1940, and was discharged on October 19, 1940, for the reason, as stated on his discharge, "Services no longer required K. R. A. C. I., paragraph 652, clause 22." His discharge also shows his military service number was 1189144; that his rate was "RAF wireless mechanic under training"; that he was stationed at Cranwell, Lincolnshire, England, and that his character and conduct was, in general, very good.

Senator George Smathers, the author of the bill, has submitted a number of letters and documents in support of the bill, among which is the following letter:

WALTERS, MOORE & COSTANZO
ATTORNEYS AT LAW

*Miami, Fla., January 9, 1956.*

Hon. GEORGE A. SMATHERS,
*Senate Office Building., Washington, D. C.*
(Attention Mr. John J. O'Keefe.)

MY DEAR SENATOR: With reference to your letter of December 20, 1955, pertaining to the proposed special bill for the benefit of Mrs. Ethel Kallins, you are advised that I am enclosing photostatic copies of certain documents that serve to verify the following information:

Mrs. Kallins was born as Ethel Sirkis in Odessa, Russia, on May 27, 1892. On June 10, 1910, in Russia, she married Mr. Kallins, whose name was then Wolko Kalnitzky, but has since been legally changed by decree. Her husband was born in Kiev, Russia, on February 1, 1879. Both have become naturalized subjects of Great Britain.

They escaped from Russia to Constantinople, Turkey, to avoid the Bolsheviki operation; then on to Vienna, finally settling in London, England, in the year 1923.

In April 1954, they came to Miami, Fla., to visit their son, Emile Kallins. Thereafter Mr. Kallins became mortally ill and died in Miami, Fla., on March 23, 1955. Mr. Kallins' death has left Mrs. Kallins with her only relatives in the world living in the United States.

She has no connections whatever in England, businesswise or family-wise. Their son, Emile Kallins, was born in Odessa, Russia, and is a resident of the United States, living at 841 Collins Avenue, Miami Beach. He is employed by Harold Friedman Radio Co. as a mechanic. His wife, Eve Kallins, is a beautician for Comb & Curl Beauty Parlor on Collins Avenue. They have an 18-year-old son attending Miami Beach High School. Mrs. Kallins' cousin, Morris Rubins, is owner of the Hub Stores in Miami and Miami Beach, Fla.

In the event that Mrs. Kallins cannot remain permanently in the United States, she will have to return to England, where she has no home or family. Her support would be an extreme burden upon her son, insasmuch as it would require him to maintain two homes. As can be seen, he is a person of modest but steady means.

It is hoped that the Congress of the United States will favorably consider a private bill in this case, since it is apparent from a study of the Congressional Records that family unity is of great concern to Congress in connection with the immigration laws.

Inasmuch as Mr. Kallins, Jr., is not yet a citizen of the United States, no preference can be obtained under the quota. Mrs. Kallins is in temporary status and is not in violation thereof.

Thank you for your most kind consideration of this case.

Very sincerely yours,

DAVID W. WALTERS.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 2874) should be enacted.

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Calendar No. 1910

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1890

# ELISABETH DUMMER

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany S. 2888]

The Committee on the Judiciary, to which was referred the bill (S. 2888) for the relief of Elisabeth Dummer, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE OF THE BILL

The purpose of the bill is to waive the excluding provision of existing law relating to one who has been convicted of a crime involving moral turpitude in behalf of the wife of a lawful permanent resident of the United States.

### STATEMENT OF FACTS

The beneficiary of the bill is a 32-year-old native and citizen of Germany, who presently resides in that country, with her son. Her husband was admitted to the United States for permanent residence on April 1, 1954, and is employed as an expert lens grinder. The beneficiary has been denied a visa to enter the United States inasmuch as the record discloses that she was convicted of perjury on March 17, 1950, and served 5 months of a 7-month sentence. Without the waiver provided for in the bill, the beneficiary will be unable to join her husband in the United States.

A letter, with attached memorandum, dated March 28, 1956, to the chairman of the Senate Committee on the Judiciary from the Commissioner of Immigration and Naturalization with reference to the case, reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
*Washington, D. C., March 28, 1956.*

Hon. JAMES O. EASTLAND,
*Chairman, Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

DEAR SENATOR: In response to your request for a report relative to the bill (S. 2888) for the relief of Elisabeth Dummer, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Chicago, Ill., office of this Service, which has custody of those files.

The bill would waive the provision of the Immigration and Nationality Act which excludes from admission into the United States aliens who have been convicted of or admit having committed a crime involving moral turpitude, and would permit the beneficiary to enter the United States for permanent residence if she is found to be otherwise admissible. The bill also provides that this exemption shall apply only to a ground for exclusion of which the Department of State or the Department of Justice has knowledge prior to the enactment of this act.

Sincerely,

——— ———, *Commissioner,*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE ELISABETH DUMMER, BENEFICIARY OF S. 2888

Information concerning this case was obtained from Mr. Ehrenfried Dummer, the beneficiary's husband.

The beneficiary, Elisabeth Dummer, a native and citizen of Germany, was born on August 20, 1923. She married Ehrenfried Dummer on November 17, 1951, in Germany and has one son residing with her at 26 Rotenbagher, Elluuangen, Wuttenberg, Germany.

The beneficiary is unemployed and has no assets. She completed high school in Germany. Her widowed mother resides in Germany.

The beneficiary has never been in the United States. According to her husband, she was convicted and sentenced for perjury and served from 4 to 5 months before her relaese. She was denied a visa by the American consul at Munich, Germany, in February 1953, because of this conviction. The committee may desire to request the Bureau of Security and Consular Affairs, Department of State, to furnish additional information regarding the beneficiary's conviction and ineligibility for a visa.

The beneficiary's husband, a native and citizen of Germany, was admitted to the United States on April 1, 1954, for permanent residence. Mr. Dummer is employed as a lens grinder and polisher. He earns $90 a week and has assets of $3,800. He resides at 2142 North Halsted Street, Chicago, Ill.

Senator William Langer, the author of the bill, has submitted a number of letters and documents in support of the bill, among which are the following:

CHICAGO, ILL., *December 27, 1955.*

Senator W. LANGER,
*125 Office Building, Washington, D. C.*

DEAR SENATOR LANGER: Would you please give your kind attention to a matter of serious injustice in the laws pertaining to the immigrant quota and let me know if there is any way to right the situation. Here is the story as outlined to me by my employee, Ehrenfried Dummer.

Mr. Dummer is trying to get his wife and child, now in Germany, to the United States on the immigrant quota. About 7 months ago her turn came up and she was turned down and forbidden entry into this country. It seems that no one has taken the extenuating circumstances of her case into consideration and have just based the decision on a 3 months prison term, which was a miscarriage of justice in itself.

In Germany before Mrs. Dummer married Ehrenfried, she was assaulted and attacked and a child resulted from this rape. Ehrenfried married Elisabeth Fischer (now Mrs. Dummer) and gave the child his name. In 1951 Mrs. Dummer (nee Fischer) brought suit against the man who attacked her. The man, being wealthy, was able to bribe a witness to state that Mrs. Dummer was an immoral woman and as a result of this perjured testimony, Mrs. Dummer was sentenced to 3 months in prison. The fact of her spending time in prison was the only thing considered when she was turned down. No one bothered to look into the facts of the case.

This is a grave injustice to an innocent woman and a family is suffering from the seemingly hopelessness of the situation—as if they haven't had enough misery and suffering already.

Ehrenfried Dummer has spent 2½ years of his life in a concentration camp. He has lived and dreamed of the day when he could come to America and bring his family to live where freedom and democracy exist. If you were to meet him you couldn't fail to notice the deep misery and feeling of helplessness etched in the lines of his face. How can a man protect and look after his family when his beloved adopted country will not permit them to come to his side. Must this family suffer for the rest of their lives because of this gross miscarriage of justice?

Is Ehrenfried to go back to Germany and give up his coveted American citizenship so that his family will not be separated? I can tell you that this would not only be an injustice but a loss to this country. His experience in specialized optics is extremely valuable. Experience in precision scientific optics is not readily available in this country for there are no other firms in this country capable of making every type of mineral optics, which are needed by the military and atomic research projects. In my 25 years of being in business I have found only 4 men having the basic experience to start in mineral optics and they have required considerable training for this line. I am sending you my catalog, by separate mail, which will be a little more explanatory about this type of work.

Ehrenfried has had more experience than these four men all together and is the only one who can do a job from start to finish, doing all the operations which require a skilled technician. Since he has come to

work for me I have been able to better my deliveries of special optics for scientific research projects and this no doubt has speeded up the research projects which the various university labs are doing for the Government. It would surely be a loss to this country as well as to me if he were to go back.

Please let me hear from you as to whether or not anything at all can be done to enable this man's family to come here so that their suffering may come to an end.

Yours very truly,

KARL LAMBRECHT.

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WASHINGTON, D. C.

[Translation (German)]

[Senator LANGER]
The State Attorney — ELLWANGEN, *June 15, 1955.*
In reply refer to file No. Ks 6/50
Mrs. Elisabeth Dummer, née Fischer, born August 20, 1923
Ellwangen/Jagst

This is to officially certify that, by judgment of the Landgericht of Ellwangen of March 17, 1950, you were sentenced to seven months in prison for perjury in the trial for support of [alimony for?] your child Wolfgang, and that you were required to serve five months. By amnesty of the Justice Ministry at Stuttgart, the entry of the sentence was wiped off your police record on February 19, 1954.

(Signed) SCHWEITZER,
*State Attorney General.*

[Rubber-stamped: Translated by Elizabeth Hanunian, August 3, 1955.]

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 2888) should be enacted.

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Calendar No. 1911

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1891

# OKSANNA OZTEMEL

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany S. 2931]

The Committee on the Judiciary, to which was referred the bill (S. 2931) for the relief of Oksanna Oztemel, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Oksanna Oztemel. The bill provides for an appropriate quota deduction and for the payment of the required visa fee.

### STATEMENT OF FACTS

The beneficiary of the bill is a 56-year-old native and citizen of Turkey, who last entered the United States on April 20, 1954, as a visitor. The beneficiary's son, daughter-in-law, and their two minor children, with whom she resides, are citizens of the United States, and she is entirely dependent upon them for support. The husband of the beneficiary is deceased, and she resided alone for 3 years prior to her entry into the United States.

A letter, with attached memorandum, dated March 29, 1956, to the chairman of the Senate Committee on the Judiciary from the Commissioner of Immigration and Naturalization with reference to the case, reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
*Washington, D. C., March 29, 1956.*

Hon. JAMES O. EASTLAND,
*Chairman, Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

DEAR SENATOR: In response to your request for a report relative to the bill (S. 2931) for the relief of Oksanna Oztemel, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Los Angeles, Calif., office of this Service, which has custody of those files.

The bill would grant the beneficiary permanent residence in the United States upon payment of the required visa fee. It would also direct that one number be deducted from the appropriate immigration quota.

The beneficiary is chargeable to the quota for Turkey.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE OKSANNA OZTEMEL, BENEFICIARY OF S. 2931

Oksanna Oztemel, also known as Oksanna Ohniguian, is a native and citizen of Turkey who was born on September 13, 1899. Her husband, Krikor Oztemel, also a native and citizen of Turkey, died there on June 27, 1951. They were married on September 19, 1919, in Turkey. Their only child, Ara Oztemel, was born on May 8, 1926, in Istanbul. He is now a naturalized United States citizen and lives in Watertown, Mass.

Mrs. Oztemel is presently visiting with a niece at 7323 Brighton Avenue in Los Angeles, Calif. She plans to return to her son's home when he comes back there after a business trip of 5 months in Europe. Unemployed, with no income nor assets, she is totally dependent upon her son. He is president of an importing firm in Boston, Mass., and contributes approximately $200 monthly for her support. She attended college for 4 years in Turkey. She has three brothers, natives of Turkey, residing abroad.

The beneficiary's first and only entry into the United States occurred at Boston, Mass., on April 20, 1954, when she was admitted as a visitor. She applied for and received several extensions of stay. Deportation proceedings will be instituted since she failed to comply with the conditions of her admission.

Senator Leverett Saltonstall, the author of the bill, wrote to the chairman of the Senate Judiciary Committee on April 3, 1956, in support of the bill, as follows:

UNITED STATES SENATE,
*April 3, 1956.*

Hon. JAMES O. EASTLAND,
*Chairman, Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

MY DEAR MR. CHAIRMAN: This is in reference to S. 2931, a private bill for the relief of Mrs. Oksanna Oztemel, which I introduced on January 16, 1956.

Mrs. Oztemel was born in Istanbul, Turkey, in 1899. She came to the United States in April 1954, to visit her son, Ara Oztemel, 18 Upland Road, Watertown, Mass., following the sudden death of her husband in Turkey.

Mrs. Oztemel had 6 brothers, 4 of whom were killed during the Turkish uprising, along with her father. After finishing an Armenian grammar school, she was sent to a French high school, and later attended Robert College (girls' section) and was graduated with a bachelor of arts degree. She speaks, reads and writes English, French, Turkish, Armenian, and Greek. Since arriving in the United States Mrs. Oztemel has successfully completed a course in hairdressing at Mansfield Academy in Boston, Mass.

The only relatives Mrs. Oztemel has in the United States are her son, Ara, and his wife and two children. Mr. Oztemel is a naturalized citizen of the United States and his wife and two children are natural-born citizens of this country.

Mr. Oztemel has submitted the following detailed information in support of his mother's private bill:

"* * * My mother had 6 brothers, 4 of whom were killed. The other two are in France and Thiopia, respectively. After my parents sent me here, the only family they had was each other since I have no brothers or sisters. My parents were very close to each other, so that when my father died, very suddenly, at the age of 60, my mother suffered quite a shock, especially since I could not be near her. Her condition was quite serious. Her doctors in Turkey recommended that she come and see her son, daughter-in-law, and grandchildren, also consult some neurologists here. Several months after her arrival, with medical care and through her love for her grandchildren, she seemed to recover considerably. After she started the hairdressing course, she was almost back to normal. We fear that should she have to return and be lonely all over again, she will have a relapse. Furthermore, it seems natural that one should be with the only family one has.

"She is financially independent; she is well educated; she has been wonderful to her family and an asset to the society she was in. I am confident she will go on being an asset, and, therefore, merits special consideration."

Mr. Oztemel also states: "We have done all within practical means to have her remain. Being the mother of a citizen, she gets some preference. Unfortunately, the Turkish quota is so crowded that even on a second quota, she will have to wait an indefinitely long period. As, meanwhile, her visa cannot be extended, she will have to leave."

I have received several letters from good Massachusetts citizens who have known the Oztemel family for many years, and I am taking the liberty of quoting from a few.

Mrs. Helen B. Anderson, 20 Riverside Drive, Dedham (enclosure 3), writes:

"I have known Mrs. Oztemel's son, Ara, for several years, and also his wife, and although I have only known his mother for the past year, they are a family of the very finest caliber in every respect. Mrs. Oztemel is an extremely well educated, intelligent woman and would undoubtedly be a very responsible citizen, just as her son is. I would not hesitate at all in urging that she be given the right to remain here with her only living family."

Mr. Seldon Taylor James, Jr., 285 Harvard Street, Cambridge (enclosure 4), states:

"Although I do not know her too well, I have known her son and daughter-in-law for several years. Her son is a naturalized American citizen and is in every way a fine recommendation of the type of woman his mother is. They are extremely fine people, who have all the qualities one could hope for to make good American citizens. I would sincerely urge that the necessary steps be taken to insure that Mrs. Oztemel may remain in this country."

Mr. Harold Edmondson, 247 Wales Street, North Abington (enclosure 5), advises:

"I have known the Oztemel family for several years and have found them to be very fine citizens. Mrs. Oztemel was in very poor health when she first came to this country, but during the time she has been here with her son and his family, she has recovered completely and now is very active in church affairs and seems completely happy. I would heartily endorse any action which would permit her to stay here."

I have also received a letter from Mr. William R. Addy, whom I know personally, who has written as follows:

"For your information, Mr. Oztemel works with my company, Kreglinger, Inc., taking charge of some of our foreign affairs. It would be very much appreciated if you could do the necessary to assure that Mrs. Oztemel will be able to stay here with her family."

In enclosure 6, attached hereto, Mr. Addy also advises:

"I should like to recommend that this bill be approved as Mrs. Oztemel is of exemplary character and would be an asset to any community in which she lived. She is an exceptionally well educated woman, very active in church affairs and in every way a desirable person."

There are several other letters enclosed which speak highly of the Oztemel family and I believe the information contained therein will prove helpful to your committee.

Although Mrs. Oztemel would be entitled to preference status under the Turkish quota, as she is the mother of an American citizen, I understand she would have, undoubtedly, many years to wait before her name would be reached in order once she had registered for a visa with the appropriate authorities.

From all I can learn about Mrs. Oztemel it would appear that she is a fine person and her case is most worthy of earnest and sympathetic consideration by your committee.

I know that all concerned will deeply appreciate any favorable consideration which may be given S. 2931 for the relief of Mrs. Oksanna Oztemel so that she may remain permanently in the United States with her son (her only child), and his family.

Thank you for your courtesy and helpfulness in this case.

With best regards, I am,

Sincerely yours,

LEVERETT SALTONSTALL,
*United States Senator.*

ENCLOSURES

(1) S. 2931 (84th Cong., 2d sess.), private bill for the relief of Oksanna Oztemel.

(2) Copy of memorandum containing detailed information in support of S. 2931, submitted by Mr. Ara Oztemel.

(3) Copy of letter to Senator Saltonstall from (Mrs.) Helen B. Anderson, 20 Riverside Drive, Dedham, Mass., dated February 9, 1956.

(4) Copy of letter to Senator Saltonstall from Seldon Taylor James, Jr., 285 Harvard Street, Cambridge, Mass., dated February 8, 1956.

(5) Copy of letter to Senator Saltonstall from Harold Edmondson, 247 Wales Street, North Abington, Mass., dated February 10, 1956.

(6) Copy of letter to Senator Saltonstall from William R. Addy, Kreglinger, Inc., 200 Summer Street, Boston, Mass., dated February 9, 1956.

(7) Copy of statement of Ara Oztemel, dated January 11, 1956, regarding private bill for his mother, Mrs. Oksanna Oztemel, with (7a), memo giving details of Mrs. Oztemel's visa, etc.

The enclosures referred to in the above letter are contained in the files of the Senate Judiciary Committee.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 2931) should be enacted.

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Calendar No. 1912

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1892

# LOTTE WINDSCHILD

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany S. 2941]

The Committee on the Judiciary, to which was referred the bill (S. 2941) for the relief of Lotte Windschild, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE OF THE BILL

The purpose of the bill is to waive the excluding provision of existing law relating to one who is afflicted with tuberculosis in behalf of the sister of a United States citizen. The bill also provides for the posting of a bond as a guaranty that the beneficiary will not become a public charge.

### STATEMENT OF FACTS

The beneficiary of the bill is a 60-year-old native and citizen of Germany who presently resides in that country. She has been denied a visa to enter the United States inasmuch as she has been found to be afflicted with tuberculosis. It is stated that the disease is presently inactive. The beneficiary's sister is a United States citizen, and she and her husband operate a nursing home, and they will provide for the beneficiary if she is permitted to enter the United States.

A letter, with attached memorandum, dated March 22, 1956, to the chairman of the Senate Committee on the Judiciary from the Commissioner of Immigration and Naturalization with reference to the case, reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
*Washington, D. C., March 22, 1956.*

Hon. JAMES O. EASTLAND,
*Chairman, Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

DEAR SENATOR: In response to your request for a report relative to the bill (S. 2941) for the relief of Lotte Windschild, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service file relating to the beneficiary by the Newark, N. J., office of this Service, which has custody of that file.

The bill would waive the provision of the Immigration and Nationality Act under which aliens who are afflicted with tuberculosis in any form, or with leprosy, or any dangerous contagious disease are ineligible to receive visas and excludable from admission into the United States, and would authorize the issuance of an immigrant visa to the beneficiary and her admission into the United States for permanent residence under such conditions and controls as the Attorney General may deem necessary to impose after consultation with the Surgeon General of the United States Public Health Service, Department of Health, Education, and Welfare, if she is otherwise admissible under that act. The bill would also require that a bond be deposited to insure that the alien shall not become a public charge.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE LOTTE WINDSCHILD, BENEFICIARY OF S. 2941

Information concerning the beneficiary was obtained from her sister, Mrs. Herta Field.

The beneficiary, a native and citizen of Germany, was born on March 5, 1896, at Cossebaite, Saxonia, Germany. Her parents are deceased. She completed high school in her native country and thereafter was employed as a secretary. She is presently unemployed and receives a pension of $35 a month from the German Government and $35 monthly from her sister, Mrs. Herta Field. The beneficiary has never been in the United States. She is single and resides in Hamburg, Germany. In July 1953 she applied at the American consulate in Hamburg, Germany, for an immigrant visa. However, she was refused such visa as she was found to be afflicted with tuberculosis.

The beneficiary's sister, Herta Field, is a citizen of the United States. She resides in Madison, N. J., where she and her husband, Charles Field, own and operate the Leahaven Nursing Home. They state that if the beneficiary is admitted to the United States, she will be placed in the Shonghum Mountain Sanatorium at Morris Plains, N. J., for appropriate treatment.

The committee may desire to request the Bureau of Security and Consular Affairs, Department of State, to secure additional information concerning the beneficiary.

The Bureau of Security and Consular Affairs, Department of State, has advised the committee that their files contain no information adverse to the beneficiary.

Senator Clifford P. Case, the author of the bill, wrote to the then chairman of the Senate Committee on the Judiciary on January 16, 1956, in connection with the bill, as follows:

UNITED STATES SENATE,
*Washington, D. C., January 16, 1956.*

Hon. HARLEY M. KILGORE,
*Chairman, Subcommittee on Immigration,*
*Committee on the Judiciary, United States Senate,*
*Washington, D. C.*

DEAR MR. CHAIRMAN: On January 5, 1956, I introduced a private bill for the relief of Lotte Windschild, a copy of which is enclosed. I will appreciate it greatly if you will request a report from the Immigration and Naturalization Service in connection with my bill.

Mr. and Mrs. Charles Field, who direct the Lea Haven Nursing and Convalescent Home at Madison, N. J., have been most desirous of having Mrs. Windschild admitted to this country first for treatment purposes. It is their hope that she will eventually be permitted to remain as a permanent resident in the United States. Mrs. Windschild is the sister of Mrs. Charles Field.

According to the American consul in Hamburg, Germany, Mrs. Windschild was last examined on July 7, 1955, by the United States Public Health Service surgeon assigned to that office. She was found to be suffering from pulmonary tuberculosis, thus she was ineligible to receive a visa under section 212 (a) (6) of the Immigration and Nationality Act.

I believe that we are dealing here with a hardship case. Although it may be argued that treatment facilities are available in Europe, the facts of this case are that Mrs. Windschild fled from behind the Iron Curtain in the Eastern Zone of Germany to the Western Zone in January of 1953, leaving behind all her property and personal belongings. Thus, I am advised, she is virtually destitute and without living relatives except for her sister in New Jersey.

Under the provisions of my bill, Mrs. Windschild's place of treatment in the United States would have to be approved by the Surgeon General of the Public Health Service and the Attorney General. Thus, if following the preliminary treatment, confinement can be provided at the rest home of her sister and brother-in-law, this should certainly prove to be important morale and expense considerations for all concerned. If sanatorium treatment should be deemed necessary, she could be cared for at the Shonghum Mountain Sanatorium in Morristown, N. J., which is near the home of her sister, Mrs. Charles Field, subject to the approval of our medical authorities. A photostatic copy of a statement in support of this position from the superintendent of the Shonghum Mountain Sanatorium, Dr. Harold S. Hatch, indicates that at this time the disease is not infectious and is static.

In any event, she could not be considered admissible unless the steps that are now deemed necessary meet the approval of our health authorities.

I will be glad to make the correspondence in my files available to your committee at your request.

Sincerely,

CLIFFORD P CASE,
*United States Senator.*

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 2941) should be enacted.

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Calendar No. 1913

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1893

# MARIA CEDRONE DE RUBEIS

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany S. 2953]

The Committee on the Judiciary, to which was referred the bill (S. 2953) for the relief of Maria Cedrone de Rubeis, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE OF THE BILL

The purpose of the bill is to waive the excluding provision of existing law relating to one who has been convicted of crimes involving moral turpitude in behalf of the wife of a lawful permanent resident of the United States.

### STATEMENT OF FACTS

The beneficiary of the bill is a 54-year-old native and citizen of Italy, who presently resides in that country. Her husband was lawfully admitted to the United States for permanent residence on March 17,1955. In addition, the beneficiary has a daughter residing in this country who is a citizen, and her son and another daughter are lawful permanent residents. The beneficiary has been denied a visa inasmuch as the record discloses that in 1913 she was fined for unlawfully taking firewood from a restricted area and in 1939, she was convicted for taking 12 pieces of firewood unlawfully. Without the waiver provided for in the bill, the beneficiary will be unable to join her family in the United States.

A letter, with attached memorandum, dated March 30, 1956, to the

chairman of the Senate Committee on the Judiciary from the Commissioner of Immigration and Naturalization with reference to the case, reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
*Washington, D. C., March 30, 1956.*

Hon. JAMES O. EASTLAND,
*Chairman, Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

DEAR SENATOR: In response to your request for a report relative to the bill (S. 2953) for the relief of Maria Cedrone De Rubeis, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Boston, Mass., office of this Service, which has custody of those files.

The bill would waive the provision of the Immigration and Nationality Act which excludes from admission into the United States aliens who have been convicted of a crime involving moral turpitude, or admit committing acts which constitute the essential elements of such a crime, and would authorize the alien's admission for permanent residence if she is found to be otherwise admissible under such act. The bill would further provide that this exemption shall apply only to a ground for exclusion of which the Department of State or Department of Justice had knowledge prior to enactment.

Sincerely,

——— ———, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE MARIA CEDRONE DE RUBEIS, BENEFICIARY OF S. 2953

Information concerning this case was obtained from Donato De Rubeis and Pompeo De Rubeis, the beneficiary's husband and son, respectively.

Maria Cedrone De Rubeis, nee Cedrone, a native and citizen of Italy, was born on December 22, 1901, in Santo Donato, Province of Frosinone. She was married to Donato De Rubeis in Santo Donato, Italy, in 1920. There were four daughters and a son born in Italy from this marriage. She resides at Via Roma No. 75 in Santo Donato, Frosinone, Italy, with an unmarried daughter. A married daughter also resides in Italy. Another married daughter is a naturalized citizen of the United States who resides in Newton, Mass. Her son and the fourth daughter are lawful permanent residents of the United States, also living in Newton, Mass. The beneficiary completed 3 years of public school in Italy. Mrs. De Rubeis is unemployed and has no assets. She is dependent for support upon her husband who sends her $40 per month.

Evidence has been submitted to this Service that the beneficiary was arrested and fined in 1913 in Santo Donato on a charge of damaging the forest and unlawfully taking firewood from a restricted area; that she was arrested in 1937

and charged with the crime of damaging the forest and taking 12 pieces of wood unlawfully, valued at 14.40 lira, for which she was tried in 1939 and received a sentence of a fine of 676 lira, plus the value of the wood and also fined 60 lira for damaging plants; that she received a complete amnesty on April 29, 1954, and on May 26, 1954, the court of appeals completely rehabilitated the defendant according to Italian law. On November 24, 1954, she was refused an immigrant visa at the American consulate in Naples, Italy.

Donato De Rubeis, a native and citizen of Italy, was born in Santo Donato, Province of Frosinone, on December 10, 1900. He was lawfully admitted to the United States for permanent residence on March 17, 1955, and resides with his son, Pompeo, age 22 years, and his daughter, Cesidia, age 12 years, at 43 Hawthorne Street, Newton, Mass. He is employed as a laborer by a contractor in Watertown, Mass., at a wage of $75 per week. His assets consist of a savings account of $750.

Donato, Pompeo, and Cesidia De Rubeis are the persons primarily interested in the bill.

Senator John F. Kennedy, the author of the bill, wrote to the then chairman of the Senate Judiciary Committee on January 19, 1956, in connection with the case, as follows:

UNITED STATES SENATE,
*January 19, 1956.*

Hon. HARLEY M. KILGORE,
*Chairman, Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

DEAR SENATOR KILGORE: This is to express my interest in behalf of Maria Cedrone De Rubeis, for whose relief I have recently introduced private bill S. 2953 and which measure has been referred to your committee for consideration.

I am enclosing herewith an exact copy of letter which I have received, outling the facts connected with Mrs. De Rubeis' case; I feel this may prove helpful to your committee in its consideration of this bill.

Needless to say, it is my sincere hope to gain favorable passage of this legislation here in the Senate, and you can rest assured that your efforts to be of assistance in this connection will be deeply appreciated by me.

With thanks in advance for your kind attention in this matter, and with kindest regards, I remain,

Sincerely,

JOHN F. KENNEDY.

The enclosure referred to in the above letter reads as follows:

BOSTON 8, MASS., *June 22, 1955.*

Hon. JOHN F. KENNEDY,
*Senate Office Building,*
*Washington, D. C.*

DEAR SENATOR: I am writing on behalf of my client, Mr. Donato DeRubeis, of 43 Hawthorne Street, Newton, Mass., who has recently

arrived in this country for permanent residence together with his son, Pompeo.

Tragically, however, the American consular officials at Naples, Italy, have refused a visa to Mr. DeRubeis' wife, Mrs. Maria Cedrone DeRubeis, of San Donato Val Comino, Province of Frosinone, Italy, because of a very minor infraction of the law.

Mrs. DeRubeis is now 54 years of age and she was convicted in 1939 in Italy for having unlawfully taken some dead branches or twigs in the forest adjoining the town in which she lived, the total value in money of the said branches were admitted by the court as amounting to lire 14.40, equivalent in American currency to 60 or 70 cents at the then rate of exchange.

Despite the fact that evidence is available to prove that Mrs. DeRubeis had a well-known right to such taking because of the so-called right of legnatico, I pointed out in a lengthy letter to the Naples consulate that even if the said conviction is admitted as true and valid, American laws and regulations would still permit the issuance of a visa (22 C. F. R. 42 (c) (1) in Federal Register of October 21, 1954—Congressional Act of September 3, 1954, 68 Stat. 1145. sec. 1 (3) of title 18 U. S. C.).

Since, however, the above regulations provide for relief for "one offense only," the United States consulate has also uncovered an insignificant incident which occurred in the year 1913, when the lady in question was 11 or 12 years of age, at which time she barely remembers having been given a "contravvenzione" (something in the nature of a warning and immediately released) for having "helped" her older sister in carrying a bundle of wood which the latter had picked up from the floor of the forest. Because, therefore, in the opinion of the Naples consulate officials there are two "offenses," the stated laws and regulations cannot benefit her.

I am certain that you are aware of the dire poverty of most people in the smaller towns of southern Italy and of their extreme need for such commodities as fuel for the basic necessities of life.

It is our contention that even granting the justice of the conviction of 1939, the incident of 1913 can in no sense be construed as a criminal offense or conviction which involved the element of moral turpitude.

I had decided to come personally to Washington to contact State Department authorities in this matter, but since for the present Mr. De Rubeis is unable to incur expenses for my fee and travel disbursements, I appeal to your generous nature to take immediate steps with the proper authorities in Washington for the relief of the poor lady who finds herself separated against her will from the rest of her family.

With kindest personal regards and trusting that you recall my meeting you on several occasions, I am,

Yours very sincerely,

MARIO D'ALOIA,
*Counsellor at Law.*

In addition, Senator Kennedy submitted the following letter from the husband of the beneficiary of the bill:

NEWTON, MASS., *January 27, 1956.*

Re Maria Cedrone De Rubeis, S. 2953

Hon. JOHN F. KENNEDY,
*United States Senate,*
*Washington, D. C.*

DEAR SENATOR KENNEDY: I wish to acknowledge and thank you for your kind letter of January 19, 1956.

In regard to your suggestion that I obtain additional pertinent data regarding my wife's character and social and civic standing, I am pleased to enclose herewith two copies each of the following documents:

1. Certified court record.
2. Affidavit from the mayor of Comune di S. Donato val di Comino, Provincia di Frosinone, Italia.
3. Certificate of good conduct from the local parish.

I want to thank you wholeheartedly for your understanding assistance to me in this matter, and I sincerely hope that these documents will be helpful in the passage of the bill you instituted.

I shall be forever grateful for whatever you can do to bring my entire family together.

Yours respectfully,

DONATO DE RUBEIS.

The documents referred to in the above letter are contained in the files of the Senate Judiciary Committee.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 2953) should be enacted.

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Calendar No. 1914

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1894

# EGBERT CARLSSON

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany S. 3361]

The Committee on the Judiciary, to which was referred the bill (S. 3361) for the relief of Egbert Carlsson, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

### PURPOSE

The purpose of the proposed legislation is to authorize and direct the Comptroller General of the United States, notwithstanding the provisions of an act providing for the barring of claims against the United States (54 Stat. 1061), to accept and consider any claim filed by the claimant within 1 year from the date of enactment of this act for compensation for the use by the Department of the Navy from November 1943 through March 1945 of certain lands in Lake County, Oreg., as part of an aerial gunnery range.

### STATEMENT

The claimant seeks to have the Comptroller General consider on its merits his claim for compensation for the use of certain lands in Lake County, Oreg., by the Department of the Navy as a part of an aerial gunnery range from November 1943 through March 1945.

It appears clear that the lands were so used and that payment has not been made.

A claim was forwarded to the Comptroller General by the Department of the Navy by letter of December 13, 1955.

The claimant was advised by the Comptroller General in a letter of January 24, 1956, that the claim could not be considered by the Comptroller General because the claim had not been received in that office within the 10-year period set forth in an act providing for the barring of claims against the United States (54 Stat. 1061).

The record before the committee, however, indicates that the claimant has been actively pursuing this matter with the Government at least since April 1949, and that it was with some difficulty, and by enlisting the assistance of Senator Andrew F. Schoeppel and Senator Wayne Morse, that he was able to determine that it was the Department of the Navy, rather than the Department of the Army or the Department of the Air Force, which in fact used the land.

The Chief of the Bureau of Yards and Docks, Department of the Navy, with whom the claimant had been in correspondence, advised Senator Frank Carlson, whom the claimant had interested in the matter, by letter, dated June 21, 1955, which is printed in full below, that—

> At the present time this Bureau and its field representatives of the 13th Naval District are endeavoring to develop the necessary facts to enable payment to be made for the use of the above-described property.

It appears to the committee that the claimant had reason to believe that in his negotiations with the Navy he was pursuing a proper administrative remedy within the time limit. While it is true, as the Comptroller General advised the claimant by letter of February 20, 1956, which is printed in full below, that—

> "The filing of a claim with another department or agency of the Government does not satisfy the requirements of the statute,"

it appears that the Government was not without fault in the matter of delay in that the claim was not forwarded by the Department of the Navy to the Comptroller General until December 13, 1955.

On all the facts before it the committee believes that the claim should be considered on its merits by the Comptroller General, and the committee recommends favorably the proposed legislation to allow the claim to be considered.

Attached and made a part of this report are (1) a letter, dated June 3, 1955, from the claimant, to Senator Frank Carlson, (2) a letter, dated June 21, 1955, from the Chief of the Bureau of Yards and Docks, Department of the Navy, to Senator Frank Carlson, (3) a letter, dated February 20, 1956, from the Comptroller General, to the claimant, and (4) a report, dated March 22, 1956, from the Comptroller General to the chairman of the committee.

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McPherson, Kans., *June 3, 1955.*

Senator Frank Carlson,
*United States Senate,*
*Washington, D. C.*

Dear Senator Carlson: As a taxpayer in both Kansas and Oregon I am writing this letter asking for your help in getting something done in the matter as I will outline to you later on in this letter.

I believe that you will agree with me that the Navy should have done something about this before now. It was not our fault that they did not examine the records and find out that this land belonged to us at the time they used it for a gunnery range. We used to receive grazing rental from this property before they used it for gunnery purposes. The real-estate company that used to take care of this for us informed us that they could not lease it as the Navy had used it for gunnery range and no one wanted to lease it.

On April 24, 1949, I wrote Senator Andrew F. Schoeppel trying to find out which department had used this land for bombing purposes. On April 28, 1949, I received a letter from the Senator with letters attached from Maj. Gen. Lewis A. Pick, Chief of Engineers, stating that the Army or Air Force had not used this land. Also attached was a letter from O. H. Johnson, Department of the Interior, stating that the Navy may have used this land, but they were not sure. With the help of the real-estate company and the assistance of Senator Wayne Morse, of Oregon, I have received proof that the Navy did use it and that on October 7, 1954, a letter to Senator Morse which he forwarded to me from Rear Adm. J. R. Perry, CEC, USN, Chief of Bureau, admitting they had used this land and that the Navy had not made any rental payments, and he further ordered the public-works office in Seattle, Wash., to do so. I received a letter from the Seattle office and I have furnished them with an abstract of title brought up to date and also an affidavit showing all taxes had been paid up to date. I gave them everything they requested. They also requested that I present them with a claim for the land, which I did in this way. I took an average of what the grazing land around here brought and talked to many farmers and landowners around Salina, Hutchinson, and Newton. I presented a claim of $25 an acre and back interest from the time they used the land, at 3 percent, and expenses I had accrued from my attorney. This he advised me to do, so the total claim up to May 1, 1955, will be $2,000 for the land, $619.53 interest, and attorney fees $75, which I do not think is out of line. I have not included any of the time and travel that it has taken me to get this information together. I do not feel that the Navy should let this drag out and add this interest.

On February 19, 1955, I wrote to the Seattle office to see if they had done anything regarding my rental and also included the interest and attorney fee to my claim. On April 18 I received word from the Seattle office that they had forwarded my claim to the Navy Department for determination and that I should soon hear from them. Up to this date I have not heard one word.

Senator Frank Carlson, I have never asked this Government for one favor; I was glad to serve my country in World War I, in the 353d Infantry Regiment of Kansas both in this country and in France. I have never asked for any pension or hospital aid whatsoever. I have always helped in every way possible to make this country a better place to live and I have always supported the Republican Party in National, State and county politics and will continue to do so to best of my ability, but I do know that I have a just claim and I feel that it was no fault of ours that the Navy made a mistake in not examining the titles and feel that they should make every effort to settle this matter at once and not let this interest pile up. I know that you can help me in this matter and I sure will appreciate if you

will get in touch with Senator Wayne Morse, of Oregon, and the two of you can get in touch with Rear Adm. J. R. Perry, CEC, United States Navy, who has helped in this matter.

I have been fighting this since 1949 and I feel it is high time something is done,

I remain,

Sincerely yours,

EGBERT CARLSSON.

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DEPARTMENT OF THE NAVY,
BUREAU OF YARDS AND DOCKS,
*Washington, D. C., June 21, 1955.*

Hon. FRANK CARLSON,
*United States Senate, Washington, D. C.*

MY DEAR SENATOR CARLSON: I have your letter of June 3, regarding a claim of Mr. Egbert Carlsson for use by the Navy of certain lands in Lake County, Oreg.

The specific land involved is described as the E½SE¼ sec. 7, T. 36 S., R. 27 E., Willamette meridian, and was used by this Department as part of an aerial gunnery range for a period of something less than 2 years during World War II.

At the present time this Bureau and its field representatives of the 13th Naval District are endeavoring to develop the necessary facts to enable payment to be made for the use of the above-described property. From information presently available, it appears that Mr. Carlsson did not acquire title to the land in question until October 23, 1948, which is subsequent to the Navy's use. Prior to that and during the period of the Navy's use, the title to the land was in Eva M. Carlsson, the now deceased sister of Mr. Carlsson. Up until this time, there is no determination of who is entitled to receive the compensation for the Navy's use of this property. As soon as this determination is made, action will be taken to attempt to resolve the matter.

It is also noted that Mr. Carlsson is claiming rental at the rate of $25 per acre, which is far in excess of any rentals paid for other lands within the range. In fact, in most instances the Government was given the right of continuous use of the airspace on a rent-free basis with the owners and grazers retaining the right of continuous use of the land as a cattle range.

Senator Wayne Morse was advised of the foregoing in our letter of May 26, 1955, in response to a similar inquiry from him concerning this matter.

As you requested, Mr. Carlsson's letter is returned.

With kindest regards,

Sincerely yours,

J. R. PERRY,
*Rear Admiral, CEC, USN,*
*Chief of Bureau.*

COMPTROLLER GENERAL OF THE UNITED STATES,
*Washington, February 20, 1956.*

MR. EGBERT CARLSSON,
*Care of Swanson Electric Co., Inc.,*
*McPherson, Kans.*

DEAR MR. CARLSSON: Reference is made to your letter dated January 28, 1956, further regarding your claim for rental alleged to be due for lands included within the former naval aerial gunnery range, Klamath Falls, Oreg., from about November 1, 1943, through March 31, 1945.

Your claim was not considered by the Claims Division of our Office because it was not received in the General Accounting Office within 10 full years after the date it first accrued, as provided by the act of October 9, 1940 (54 Stat. 1061). You state that in April 1949, you wrote Senator Andrew F. Schoeppel regarding this claim and on April 28, 1949, you received a letter from him, together with a copy of a letter from an official of the Department of the Interior, admitting that the Department of the Navy had used the properties involved for the gunnery range.

The act of October 9, 1940, a copy of which is enclosed, provides—so far as material here—that every claim or demand against the United States cognizable by the General Accounting Office "shall be forever barred unless such claim * * * shall be received in said office within 10 full years after the date such claim first accrued." The only exception is with regard to persons in the military service.

Under the above-quoted provisions of the statute, a claim must be received in the General Accounting Office within the time provided to be entitled to consideration. The filing of a claim with another department or agency of the Government does not satisfy the requirements of the statute. It follows that since your claim was not received in our Office within 10 years from the date it first accrued, the Claims Division had no alternative but to return it to you, together with a copy of this act, as provided by section 2 of the statute.

Accordingly, under the circumstances in your case it will be apparent that we are without authority to further consider your claim.

Very truly yours,

JOSEPH CAMPBELL,
*Comptroller General of the United States.*

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COMPTROLLER GENERAL OF THE UNITED STATES,
*Washington, March 22, 1956.*

HON. JAMES O. EASTLAND,
*Chairman, Committee on the Judiciary,*
*United States Senate.*

DEAR MR. CHAIRMAN: Reference is made to your letter of March 6, 1956, acknowledged March 9, requesting a report on S. 3361 which is entitled "A bill for the relief of Egbert Carlsson."

The claim of Egbert Carlsson for rent for the use of lands included within the former naval aerial gunnery range, Klamath Falls, Oreg., from November 1943 through March 1945, was forwarded here by the Department of the Navy by letter of December 13, 1955. By letter of January 24, 1956, we advised Mr. Carlsson that his claim

could not be considered because the claim had not been presented here within 10 years after the date it first accrued, the act of October 9, 1940, (54 Stat. 1061, 31 U. S. C. 71 (a)) precluding consideration and barring all claims cognizable by the General Accounting Office unless claim is received in our Office within 10 years after the date such claim first accrued. S. 3361 would waive the requirements of the act referred to above and permit the General Accounting Office to consider the claim of Mr. Carlsson if filed here within 1 year from the date the bill is enacted.

The record here indicates that the airspace over the land involved, consisting of 80 acres of third-class grazing land having an approximate value of $2.50 per acre, or $200 in all, was used for the 17-month period involved as an aerial gunnery range. The land which apparently was not then otherwise used and which was useful only as grazing land, having an approximate rental value of $8 per month, was owned by the claimant's sister who since died. The claimant prior to his sister's death purchased the land and under her will succeeded to her estate with certain exceptions not here involved. It appears no damage was done to the land and that the claimant learned of the use of the land as a gunnery range only through correspondence in 1949 with a realty firm. It appears he made some effort in that year to determine which department of the Government used the land, and upon ascertaining that the Navy had done so, made claim in September 1954 to the Department of the Navy for rental. Although it appears that the land prior to its use as a gunnery range had only been used for grazing purposes, producing a return of little more than sufficient to pay the land taxes, and which for the 17-month period at $8 per month would have at most a rental value of $136, claim was made in the amount of $2,000 plus interest and attorney's fees of $694.53 but subsequently was reduced to $1,600. It appears that the interim between the time the claim was presented to the Navy Department and its forwarding to this Office was consumed in developing the amount and nature of his claim since the evidence initially furnished did not establish his ownership of the land at the time of its use by the Navy Department or his right to any rentals therefor.

The act of October 9, 1940, was enacted to reduce the expense of storage and preservation of records necessary to consider and refute old and stale claims and to protect the Government from the loss of witnesses having a personal knowledge of the events upon which claims are based. The period allowed for filing claims is considerably longer than the statutory periods of limitation generally applicable to court action.

Thus, although Mr. Carlsson learned as early as 1949 that the airspace above the land involved was being used as an aerial gunnery range, no claim was made by Mr. Carlsson for such use of this land until the matter was referred to the Department of the Navy in September 1954. At that time more than 10 years had elapsed from the time the Navy first began to use the land as a gunnery range. Consequently, a portion of his claim would have been for disallowance even if there had been no delay in reporting it to the General Accounting Office.

It does not appear, therefore, that the claimant was without fault in the delay in presenting his claim to the General Accounting Office. Consequently, and since the enactment of S. 3361 would establish an undesirable precedent for similar legislation and might result in a necessity for retaining Government records for extensive periods with consequent necessity for storage space which only could be secured at great expense to the Government, we recommend that S. 3361 not be given favorable consideration.

Sincerely yours,

JOSEPH CAMPBELL,
*Comptroller General of the United States.*

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Calendar No. 1915

84TH CONGRESS, 2d Session } SENATE { REPORT No. 1895

# MRS. ESTHER REED MARCANTEL

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 1488]

The Committee on the Judiciary, to which was referred the bill, (H. R. 1488) for the relief of Mrs. Esther Reed Marcantel, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

### PURPOSE

The purpose of the proposed legislation is to pay Mrs. Esther Reed Marcantel the amount of $6,134.12 in full settlement of all claims against the United States arising out of the death of her husband, John Dorcena Marcantel, who was killed when his automobile was struck by a United States Army truck in Oberlin, La.

### STATEMENT

On December 26, 1944, at about 10:15 a. m., the claimant's husband, John Dorcena Marcantel, was proceeding east on Louisiana State Highway 25 near the point where it intersects with United States Highway 165. His speed was estimated at from 10 to 15 miles an hour when he approached the intersection. At the same time a military convoy was moving south on United States Highway 165. A 2½-ton Army truck, which was part of the convoy, struck the Marcantel vehicle as it crossed the intersection and after the impact went out of control, ran through a filling station, sideswiped one car and

struck another, and finally stopped after striking and injuring an employee of the filling station. In this manner the truck traveled about 75 feet from the point of impact.

The driver of the Army vehicle states that although it was raining, he observed the civilian car from the time that the Army truck was 75 yards from the intersection. However, he assumed that the civilian car would stop and, therefore, merely sounded his horn and did not attempt to slow down. The estimated speed of the Army vehicle at the time of impact is 35 miles per hour.

The claimant's husband entered the intersection oblivious of the oncoming Army truck. Since it was raining at the time the accident took place, the left front window of the private vehicle was closed which may have limited the driver's observation somewhat, although the intersection was comparatively open. There were no military police or guards at the intersection nor any traffic-control devices of any kind.

Under the law of the State of Louisiana, it appears that the driver of the private vehicle had the right-of-way, by reason of being to the right of the driver of the Government vehicle and by reason of having first entered the intersection. The Department of the Army in its report admits the negligence of the driver of the Government vehicle in failing to yield the right-of-way and in entering the intersection at an excessive rate of speed. The departmental report also points out that the driver of a Government vehicle is subject to the same rules of the road at intersections as the driver of a private vehicle unless direction of traffic is controlled by authorized civilian or military authorities. Despite the admitted negligence on the part of the driver of the Government vehicle, the Department of the Army recommends against enactment of the instant legislation. The Department alleges that the evidence was that the claimant's husband did not use the degree of care which a reasonably prudent man would exercise under the circumstances and was therefore contributorily negligent. In support of this contention the Department points out that 10 of the vehicles in the convoy had already passed the intersection and had Mr. Marcantel been exercising reasonable care, he would have seen several of the evenly spaced vehicles passing the intersection which would have placed him on notice that they were a part of a series of trucks that would continue to pass. The Department contends that this notice, coupled with the warning of the horn sounded by the driver of the Army vehicle should have served to alert Mr. Marcantel.

The report of the Department of the Army also discusses the status of the Louisiana case law as applied to accidents of this type. The conclusion drawn in the report is that the claimant's husband was guilty of contributory negligence under Louisiana law and could not, therefore, if he were alive, recover damages sustained in the accident in an action at law.

Nowhere in its report does the Department of the Army undertake to discuss the possible applicability of the doctrine of last clear chance.

The committee disagrees with the recommendation of the Department of the Army. It is admitted that the driver of the Army vehicle was negligent. However, contributory negligence is sought to be imputed to the driver of the private vehicle by an allegation that he was unable to anticipate that the driver of the Government vehicle

would fail to yield the right-of-way and would increase the speed of a vehicle which was already in excess of the authorized limit. While the committee does not believe that it is possible to ascribe such an ability to the ordinarily prudent man, it should be apparent from the position of the vehicles that if both drivers were negligent, it was the driver of the Government vehicle who had the last clear chance to avoid the accident. In this posture, the committee believes that the Government of the United States should accept responsibility for the accident and reimburse this claimant for the death of her husband.

The committee has been furnished with an affidavit executed by the attorney for the claimant, setting forth the effort and expenses expended by him in furtherance of this claim. The committee, after examining the affidavit, is of the opinion this attorney has put forth sufficient effort to entitle him to a fee.

Attached to this report is the report of the Army referred to earlier, two affidavits, one executed by Mr. Tom Turner, a witness to the accident, and the other by the claimant, Mrs. Marcantel.

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DEPARTMENT OF THE ARMY,
*Washington, D. C., October 21, 1954.*

Hon. CHAUNCEY W. REED,
*Chairman, Committee on the Judiciary,*
*House of Representatives.*

DEAR MR. REED: Reference is made to your letter enclosing a copy of H. R. 10026, 83d Congress, a bill for the relief of Mrs. Esther Reed Marcantel, and requesting a report on the merits of the bill.

This bill provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Mrs. Esther Reed Marcantel, Oberlin, Allen Parish, Louisiana, the sum of $25,000. The payment of such sum shall be in full settlement of all claims of the said Mrs. Esther Reed Marcantel against the United States arising out of the death of her late husband John Dorcena Marcantel, who was killed on December 26, 1944, as a result of an accident involving a United States Army truck in Oberlin, Louisiana, at the intersection of United States Highway Numbered 165 and Louisiana State Highway Numbered 25".

Records of the Department of the Army show that John Dorcena Marcantel was born on September 28, 1893; that, beginning in 1942, he operated a store in Oberlin, La.; that his average income for the 2 years preceding his death was $4,122 per annum; that he had only 1 dependent at the time of his death, his wife, Mrs. Esther Reed Marcantel. On December 26, 1944, at about 10:15 a. m., a loaded Army 2½-ton cargo truck with trailer, operated by an enlisted man, was proceeding as a part of a military convoy south on United States Highway No. 165 through Oberlin, La., at a speed of approximately 35 miles per hour. The vehicles in the convoy were spaced at intervals of 60 to 80 yards. A 1940 Chevrolet coach, owned and operated by John D. Marcantel, was proceeding east on Louisiana State Highway No. 25, approaching the intersection with United States Highway No. 165, at a speed of between 10 and 15 miles per hour. It was raining and no military police or other guards had been placed at the

intersection which had no traffic-control devices of any kind. When the Army vehicle in question was approximately 75 yards from the intersection the driver of such vehicle observed the approach of the civilian car. He sounded his horn, and, thinking that the other driver would stop, continued into the intersection without reducing his speed. The civilian car entered the intersection when the Army vehicle was approximately 10 or 15 yards away, although the driver of such vehicle had an unobstructed view of the Army vehicle and the convoy of which it was a part. The Army truck struck the front end of the civilian car, demolishing it and killing the driver, John D. Marcantel. After the impact the Army vehicle went out of control and traveled approximately 75 feet before stopping. The truck entered a driveway on the east side of United States Highway No. 165, ran through a filling station, sideswiped a Ford coupe, struck and damaged another automobile, and finally stopped after striking and injuring an employee of the filling station, Joseph Thompson. Photographs of the Marcantel car, taken after the accident, show that the left front window was closed, which would have limited the driver's observation because of the drizzling rain on the side from which the Army vehicle was approaching.

The only eyewitnesses to the accident were the Army driver, an enlisted man riding with him, and the driver of the next Army truck in the convoy.

Two days after the accident, on December 28, 1944, Technician Fourth Grade Warren Dubin, the driver of the Army vehicle involved in this accident, made a sworn statement giving his version of the accident, in part, as follows:

"At the time of the collision, I was traveling at a speed of between 30 and 35 MPH [miles per hour] and at a distance of from 60 to 70 yards behind the truck in front of me. The convoy was moving south on United States Highway 165 and the civilian car was moving east on State Highway 25. As my truck approached the intersection of United States Highway 165 and State Highway 25, I saw the civilian car at the intersection traveling at a very low rate of speed, approximately 10 MPH [miles per hour] with every indication that it was going to stop at the intersection to permit the convoy to clear, as the vehicles preceding mine had been passing the intersection in clear view. However, I blew my horn as a special warning even though it appeared that Mr. J. D. Marcantel would not appear at the intersection. The driver of the 1940 Chevrolet coach, Mr. J. D. Marcantel, Oberlin, La., did not stop but entered the intersection when I was 10 or 15 yards away, not giving me an opportunity to stop my truck which was heavily loaded and towing a heavily loaded 1-ton trailer. * * *."

On June 1, 1945, Mrs. Eulo Gotro gave the following sworn statement to the Army claims officer:

"My name is Mrs. Eulo Gotro; I live on the west side of Highway 165 about a quarter of a mile north of the intersection of United States Highway 165 and Louisiana Highway 25.

"In the middle of the morning on December 26, 1944, I left my home and started to walk south on Highway 165 to Oberlin to the store. I was on the highway when some Government trucks passed me going in the same direction as I was. When they passed me I noticed they were going quite fast. I would not be able to estimate their speed.

"Question. What was the distance between these trucks?

"Answer. A little less than the distance between telephone poles.

"Question. Do you know what a convoy is?

"Answer. Yes.

"Question. Were all the trucks about the same distance between each other?

"Answer. Yes; it seems like they all were.

"Question. Did you notice any longer distance between any two trucks?

"Answer. No.

"Question. Did you actually see the collision?

"Answer. Not exactly; I noticed the Government truck running through the filling station. I did not notice the private car until I went to the scene.

"Question. Where were you standing when you saw the truck go through the filling station?

"Answer. I was walking toward Oberlin on the west side of the highway.

"Question. How far were you from the intersection of United States Highway 165 and Louisiana Highway 25?

"Answer. About 2 blocks.

"Question. Describe the weather at the time.

"Answer. It was raining.

"Question. More than a drizzle?

"Answer. More than a drizzle, but not pouring."

At a coroner's inquest into the death of John D. Marcantel, held at Oberlin, La., on December 26, 1944, the coroner and jurors found that the driver of the Army vehicle was not negligent in his duty and he was absolved from blame. However, they further stated that in view of the evidence that the military authorities placed no guard at the intersection, they believed that the Army was at fault in not properly warning the public of the passage of the convoy.

On January 22, 1946, Esther R. Marcantel, temporary administratrix of the succession and estate of John D. Marcantel, deceased, filed a claim with the War Department (now Department of the Army) in the amount of $26,134.12. The claim included $745 for the destruction of Mr. Marcantel's car, $389.12 for his funeral expenses, and $25,000 for his death. However, the claim was disapproved by the War Department on March 29, 1946, on the ground that the proximate cause of the accident and the resulting death of Mr. Marcantel and the destruction of his automobile was the combined negligence of both drivers. It was found that the Army driver was negligent in entering the intersection at an excessive rate of speed, without assuring himself that he could do so in safety, and in failing to yield to Mr. Marcantel the right-of-way to which he was entitled by reason of the fact that he had entered the intersection first and to the right of the Army vehicle. It was further determined that Mr. Marcantel was contributorily negligent in that he entered the intersection without assuring himself that it was safe to do so when he saw or should have seen that the Army convoy was moving through the intersection and that the Army vehicle involved in the accident was closely approaching the intersection at a fast rate of speed with its horn blowing. The act of July 3, 1943 (57 stat. 372, 31 U. S. C. 223b), as amended, under which authority this claim was submitted,

provides that contributory negligence on the part of the claimant is a complete bar to the approval of a claim thereunder. Thereafter, on May 20, 1946, the Secretary of War (now Secretary of the Army) sustained the action taken in disapproving the claim and denied the appeal therefrom.

Mrs. Marcantel has received $1,842.85 in insurance benefits as the result of her husband's death. She alleges that the estate contained $6,000 and the records show that Mr. Marcantel owned a building worth $10,000.

The Department paid the claims of the other persons who sustained personal injuries or property damage as a result of the accident because it was considered that the Army and Mr. Marcantel were joint tort-feasors and the claimants could elect to recover from either one or both. This Department thereafter recommended, regarding H. R. 4975, 80th Congress, a bill for the relief of Joseph Thompson, that an award in the amount of $6,000 be given to Mr. Thompson as compensation for personal injuries he sustained in the accident, there being no statute available to the Department under which he could be paid for other than medical and hospital expenses actually incurred.

However, regarding the claim here involved, it is the opinion of this Department that John D. Marcantel was contributorily negligent and that such negligence bars the recovery of any damages from the United States on account of the accident. The drivers of vehicles in a military convoy are subject to the same rules of the road at intersections as the drivers of private vehicles unless direction of traffic is controlled by authorized civilian or military authorities. Although United States Highway No. 165 was one of the principal highways in the State of Louisiana, it had not been made a "through highway" in accordance with the State statutes and did not have "stop" signs at the intersection here involved giving it the right-of-way over Louisiana Highway No. 25. Consequently, Mr. Marcantel had the right-of-way by reason of being to the right of the driver of the Government vehicle, and by reason of first having entered the intersection. In *Lake Charles Stevedores, Inc.* v. *Streator* (6 So. 2d 242 (La. Ct. of App. 1st Cir., 1942)), it was held that where neither street in a city had the right-of-way by virtue of any city ordinance, under the State Highway Regulatory Statute (rule 11a, title II, sec. 3, of Act 286 of 1938), the car approaching on the right had the right-of-way despite the fact that the other street was much more used and traveled.

The speed of the Government vehicle was in excess of the 25 miles per hour speed limit in the town of Oberlin, and, under the attendant circumstances, viz., a heavily loaded vehicle proceeding in the rain approaching an intersection of 2 highways at a speed too great to allow the driver to relinquish the right-of-way asserted by Mr. Marcantel, constituted negligence, which was a proximate cause of the collision and subsequent death of Mr. Marcantel.

However, it cannot be said that Mr. Marcantel was a mere passive agent in this accident. The evidence shows that he did not use that degree of care which a reasonably prudent man would exercise under the circumstances. Although he was driving in a drizzling rain, when his vision of the road would necessarily be more restricted than in clear weather, the front window on the driver's side of his car was closed, restricting his vision even further. While the presence of a filling station obstructed his view of the highway in the direction

from which the Army vehicles were approaching, to some extent, there was no obstruction to limit his view in the opposite direction. Ten of the vehicles in the convoy had already passed as Mr. Marcantel approached the intersection and, had he been exercising a reasonable degree of care, he would have seen several of the evenly spaced vehicles passing the intersection, placing him on notice that they were a part of a series of such trucks which might continue to pass. The driver of the Army vehicle could see the Marcantel car when it was about 75 yards away. Thus, Mr. Marcantel should have been able to see the approach of the Army vehicle from a similar distance, traveling at a rapid rate of speed, and he should have heard the horn of such vehicle being sounded as a warning. His failure to yield the right-of-way under such circumstances and his proceeding into the intersection when the Army vehicle was 10 or 15 yards away, traveling at too rapid a speed to stop within that distance, constituted negligence and a proximate cause of the accident.

It is well established by legal precedent that a motorist, even though having the right-of-way, is not absolved from the necessity of being cautious at all times, the degree of care to be used depending on conditions and surroundings, and increasing as the danger increases. *Darick* v. *Smith* (173 So. 601 (La. Ct. of App., 2d Cir., 1937)); *Bryan* v. *Magnolia Gas Co.* (13 La. App. 52, 127 So. 124 (La. Ct. of App., 2d Cir., 1930)). Illustrative of this principle is the case of *Blackburn* v. *Ainsworth* (23 So. 2d 696 (La. Ct. of App., 1945)). In this case the plaintiff was suing two defendants as joint tort-feasors whose negligence occasioned his damages. The defendant Ainsworth, driving west at a speed of approximately 50 miles per hour, continued past a "stop" sign into an interesection. Defendant Mosely, driving north, had a range of vision of approximately 150 feet in the direction from which Mr. Ainsworth was driving but, having the superior right-of-way, he continued into the intersection and was involved in a collision with the car of Mr. Ainsworth. Mr. Mosely contended that he was traveling at a moderate rate of speed, 15 to 18 miles per hour; that when he was about 20 feet from the intersection he looked to the east for approaching traffic and saw none; and that he then proceeded into the intersection. The court held that both drivers were negligent, and the opinion reads, in pertinent part, on page 699, as follows:

"If he looked therefore, he should have seen the Ainsworth car and had he seen it, coming at the rate of speed he says it was going, he should have realized that the driver would not be able to obey the 'stop' sign at the intersection and it then became his duty to stop in order to avoid the collision. That is the law as stated in Blashfield (Perm. Ed., vol. 2, sec. 1032), page 216, on the point here involved, and also as interpreted in the recent case of *Termini* v. *Aetna Life Insurance Company* (La. App., 19 So. 2d 286).

"But the testimony in this case leaves us in serious doubt whether Mosely and his wife looked for approaching traffic at the corner, as they both say they did, or that if they looked they could have seen any. They admit that because of the rain and cold weather that night, the windows of the car were all raised. * * * The situation was one which, because of the existing conditions, demanded unusual precautions on his part. With his vision impaired as it was on approaching an important and dangerous intersection, it became his duty to exercise the greatest care, even to the extent of stopping if

that became necessary, before entering and proceeding across. We are of the opinion that the defendant Mosely failed to observe the degree of care which was required of him and conclude that he should be liable to the plaintiff for damages as well as the defendant Ainsworth." Thus, the court decided, in a case wherein the facts were similar to those in the instant case, that Mr. Mosely, whose position is strikingly similar to that of Mr. Marcantel, was guilty of contributory negligence. In the case now being considered the fact that there was no "stop" sign on the highway upon which the Army vehicle was traveling imposed the obligation of an even greater degree of care upon Mr. Marcantel than that imposed upon the defendant in the aforementioned case. It is well settled that contributory negligence is a complete bar to recovery under Louisiana law, *Allen* v. *Texas & Pacific Ry. Co*, (195 F. 2d 545, U. S. Ct. of App., 5th Cir., 1952), and cases cited therein. Such negligence would bar any claim by Mr. Marcantel if he were alive for damages sustained in the accident, and, therefore, bars any claim presented by his widow or estate.

After a careful consideration of all the facts and circumstances in this case, it is the opinion of the Department of the Army that there is no justifiable basis, in law or in equity, for the granting of an award to Mrs. Marcantel. There are no circumstances here present that warrant singling out this claimant for preferential treatment and for granting rights to the claimant which are denied to other claimants in similar circumstances. This bill, if enacted, would be highly discriminatory in that it would grant special benefits to this claimant, in complete disregard of established principles of law, which are denied to numerous others whose claims have been barred by contributory negligence. Therefore, this Department, while deeply regretting the unfortunate death of Mr. Marcantel, is obliged to recommend that this bill be not favorably considered by the Congress.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

ROBERT T. STEVENS,
*Secretary of the Army.*

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STATE OF LOUISIANA,
*Parish of Allen:*

Before me, Alfred R. Ryder, notary public for the above-named parish and State, personally came and appeared Tom Turner, a resident of Oberlin, Allen Parish, La., who upon being duly sworn deposed:

That on the day of December 26, 1944, I was an eyewitness to an automobile accident which occurred in Oberlin, La., on United States Highway 165 at an intersection where I then operated a service station. Involved in this accident was a United States Army truck and an automobile being driven by J. D. Marcantel, a resident of Oberlin, La.

At the time the accident occurred, I was in the process of servicing an automobile parked at my gasoline pumps. The accident occurred at approximately 10 a. m. December 26, 1944; it was raining and there was a dense fog. The Army truck was proceeding in a southerly direction on United States Highway 165 approaching the intersection. The automobile being driven by J. D. Marcantel was proceeding in a westerly direction on Louisiana Highway 25, approaching the same

intersection. The Marcantel automobile entered the intersection before the Army truck did and he appeared to have been past the center of the intersection when the Army truck collided with the automobile.

When the 2 vehicles collided, the automobile being driven by J. D. Marcantel was knocked or thrown about 70 feet southwest of the point of impact and stopped on the west side of United States Highway 165, across the highway from my service station.

Mr. J. D. Marcantel was killed instantly. I was standing approximately 20 feet from the point of impact, and following the impact the Army truck went off the left side of United States Highway 165 and upon the paved surface of my service station driveway, missing me by about 2 feet. The truck continued in a southerly direction, striking a 4-inch iron pipe which supported a gasoline sign, cutting the pipe clean; tore off the north wall of my wash and grease shed; struck the steel grease rack, bending the rack into a U shape; knocked off from the rack an automobile which was being greased; injured a Negro employee named Joseph Thompson who was greasing the car; tore off the south wall of the wash and grease rack; tore off the south corner of a building I was using as a storage room; busting the north wall of a cafe being operated by a Mr. Cleve Lee, and the truck then came to a stop.

I do not know how fast the truck was being driven, but it appeared to be moving extremely fast. The accident was caused solely by the negligence of the driver of the Army truck in driving too fast and not stopping his truck after the Marcantel automobile had entered the intersection first.

In testimony hereof I have hereunto subscribed my name on this 2d day of February 1955.

TOM TURNER.

Sworn to and subscribed before me, this 2d day of February 1955 at Oberlin, Allen Parish, La.

[SEAL] ALFRED R. RYDER, *Notary Public.*

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AFFIDAVIT

STATE OF LOUISIANA,
*Parish of Allen:*

Before me, a notary public, duly commissioned and qualified in and for the above parish and State, personally came and appeared Mrs. Esther R. Marcantel, a resident of Allen Parish, La., who deposes and says:

That she is the widow of the late John Dorcena Marcantel, who was fatally injured in a collision with a United States Army vehicle at the intersection of United States Highway 165 and 6th Avenue, in the town of Oberlin, Allen Parish, La., on December 26, 1944.

That to her knowledge, the said John Dorcena Marcantel was 61 years of age at the time of his death, having been born September 28, 1883;

That expenses incurred as a result of said accident and death of the said John Dorcena Marcantel were as follows:

| | |
|---|---|
| Burial expenses | $389.12 |
| Loss of automobile | 745.00 |
| Total | 1,134.12 |

That the average annual net income of the said John Dorcena Marcantel exceeded $3,600 per year for the previous 5 years.

Signed this the 18th day of April A. D. 1955.

ESTHER R. MARCANTEL.

[SEAL]

A. E. DARBONNE, Jr.,
*Notary Public, Allen Parish, La.*

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Calendar No. 1916

84TH CONGRESS, 2d Session } SENATE { REPORT No. 1896

# MRS. ANNA ELIZABETH DOHERTY

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 1913]

The Committee on the Judiciary, to which was referred the bill (H. R. 1913) for the relief of Mrs. Anna Elizabeth Doherty, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

### PURPOSE

The purpose of the proposed legislation is to pay to Mrs. Anna Elizabeth Doherty, of Atlantic City, N. J., the sum of $3,613.30, the amount of allotments due her as the lawful wife of Joseph F. Doherty, a member of the United States Navy, beginning January 1, 1951, and ending October 31, 1952.

### STATEMENT

A résumé of the facts appear in the House Report No. 119, 84th Congress, and are as follows:

Joseph F. Doherty sued his wife, the claimant here, in the courts of Arkansas for a divorce first in January of 1951. She immediately retained counsel in Atlantic City where she was a resident, who in turn engaged counsel in Arkansas. Immediately after counsel entered their appearance in this matter Mr. Doherty voluntarily withdrew his suit for divorce.

Almost on the same day that this suit was withdrawn Joseph F. Doherty came to Atlantic City for the express purpose of trying to convince his wife to agree to his getting a divorce, which she refused to do. When he left Atlantic City he left with the understanding that he was not going to get a divorce, and told his wife that if she did not hear from him further or get her allotment check she was to get in touch with his commanding officer.

When she did not hear from him in February of 1951 she wrote to the commanding officer and for the first time she received a letter, dated February 23, from him. This letter was to the effect that her husband had filed a new suit for divorce in Arkansas, using a fraudulently written waiver of notice, and that by means of this fraud he had obtained a divorce and that he had immediately thereafter married another woman.

Under date of February 26, 1951, 3 days after the letter from the commanding officer is dated, Mrs. Doherty, through her attorneys, wrote a letter to Mr. Doherty's commanding officer, informing him that this divorce decree was a fraud, and indicated that they were going to contest the action immediately, which they proceeded to do.

Ultimately the divorce decree was set aside by a consent decree on the grounds that Mr. Doherty was not a bona fide resident of the State of Arkansas at the time the divorce decree was issued. As a matter of fact, the records indicate that the last address given by Mr. Doherty was that of Atlantic City.

As soon as the Department of the Navy received word of the divorce of February 1951, payments to the claimant were discontinued and payments made to the new Mrs. Doherty at the Navy man's request.

Since the decree has been set aside payments to the only legitimate Mrs. Doherty have been reinstated.

This same serviceman has applied to the courts of Tennessee for a divorce and likewise that suit was dismissed.

There is now pending in the courts of Las Vegas, Nev., a new suit for divorce which has been contested by Mrs. Doherty and we are waiting word as to the court's decision there.

In commenting on this claim, the House states as follows:

The only question involved is the payments which were stopped from January 1, 1951, to and including October 1, 1952, or the period in which the vacated divorce was in effect, according to the information in the possession of the Navy Department. Had there been no divorce, the withheld payments from the claimant would amount to $3,613.30.

We feel that the Navy Department was negligent in that it did not recognize the immediate action on the part of the claimant and that it did not at least withhold the payments from the so-called Mrs. Doherty until the court decided whether or not the divorce was legitimately obtained. Certainly the lawful wife, the claimant, was not at fault, and certainly she acted with as much dispatch as she could, and notwithstanding this, found herself deprived of the payments to which she was justly entitled. An investigation of the records will disclose that this claim was vigorously pursued by the lawful wife and that as soon as she knew of the divorce she proceeded with diligence.

The question is what would be the equitable thing to do in a case like this. We believe that justice will be done only by protecting the interests of the lawful wife, Mrs. Anna Elizabeth Doherty, and that the claimant should be paid the $3,613.30 which she is claiming in full settlement of her claim.

The committee, after a study of the facts in this case and the attached reports, is constrained to agree with the conclusions reached by the House. Inasmuch as immediate action had been taken by the claimant to notify the Navy Department of the situation, it would seem reasonable and proper that the Navy Department should have withheld payment to either spouse until the conflict had been resolved. Since the Navy took upon themselves to resolve the matter in favor of the second wife and found subsequently to have been in error, it is the opinion of the committee that the claimant should not have been penalized as to her rights in the matter. The committee, therefore, concludes that the bill is meritorious and recommends it to the favorable consideration of the Senate.

DEPARTMENT OF THE NAVY,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
*Washington, D. C., April 20, 1953.*

Hon. CHAUNCEY W. REED,
*Chairman, Committee on the Judiciary,*
*House of Representatives, Washington, D. C.*

MY DEAR MR. CHAIRMAN: Reference is made to your letter of February 26, 1953, to the Secretary of the Navy requesting comment on H. R. 3245, a bill for the relief of Mrs. Anna Elizabeth Doherty.

The subject bill provides that the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Mrs. Anna Elizabeth Doherty, Atlantic City, N. J., the sum of $3,613.30. The payment of this sum shall be in full settlement of all claims of the said Mrs. Anna Elizabeth Doherty against the United States for payment of allotments to which she was entitled as the lawful wife of Joseph Franklin Doherty (a member of the U. S. Navy) during the period beginning January 1, 1951, and ending October 31, 1952, but which she never received.

The statement in subject bill that "the Department of the Navy, without investigation, withheld payment of such allotment to the said Mrs. Anna Elizabeth Doherty" appears to call for a somewhat detailed review of the facts in this case.

Under the provisions of the Dependents Assistance Act of 1950 (64 Stat. 794; 50 App. U. S. C. 2201) and regulations adopted pursuant thereto, the payment of basic allowance for quarters allotment *is payable for current support of a service member's dependents* [italics supplied] and then only in behalf of such persons as are determined to be lawful dependents. This law makes no provision whereby any person other than the service member may apply for these benefits.

The records of this Department disclose that during the months of September, October, and November, 1950, Doherty had a $95 per month voluntary allotment from his pay in effect, payable to Mrs. Doherty.

On February 2, 1951, in the chancery court, Crittenden County, Ark., Doherty obtained an absolute divorce from Anna Elizabeth Doherty. It is the policy of the Department of the Navy to give full faith and credit to the decree of all civil courts of competent jurisdiction within the United States. Accordingly, when Doherty submitted to this Department a certified copy of the decree of divorce, he was properly permitted to discontinue the allotment which was then in effect for the support of his wife, as the court awarded no support to Mrs. Doherty.

It is neither possible nor appropriate for this Department to question the decree of any court. Furthermore, under the provisions of the Dependents Assistance Act of 1950, a divorced wife is not an eligible dependent. On and after February 2, 1951, therefore, Doherty was not entitled to receive credit of basic allowance for quarters because of the dependency of Anna E. Doherty, until October 1, 1952, when the divorce decree was vacated.

It is to be noted that the decree of February 2, 1951, states in part that the defendant in the action, Anna E. Doherty, had entered her written appearance in the cause. The subsequent decree granted by the same court on October 1, 1952, which vacated the earlier decree, does not state that the written appearance of Mrs. Doherty had been forged or falsified, but does say that the decree of divorce was vacated because it was determined that Joseph Franklin Doherty was not a bona fide resident of Crittenden County, Ark. It would appear, consequently, that Mrs. Doherty was fully aware that her husband was suing her for divorce in February 1951, yet she took no action at that time to contest the suit.

Subsequent to the entry of the above-mentioned decree of divorce, on February 10, 1951, Doherty married another woman who was the mother of two children by a former marriage. On March 13, 1951, Doherty applied for basic allowance for quarters allotment based on the dependency of his new wife. After appropriate investigation, this application was approved for payment. Still later, on November 21, 1951, Doherty applied for a basic allowance for quarters allotment in behalf of his two stepchildren and, after appropriate investigation, this application was also approved. The basic allowance for quarters allotment in behalf of Doherty's second wife and two minor children continued to and included the month of September 1952, at which time this Department was advised that the above-mentioned decree of divorce which purported to dissolve the marriage of Doherty and Anna Elizabeth Doherty had been vacated and set aside, thereby nullifying Doherty's marriage to his second wife.

Immediately upon receipt of the decree of October 1, 1952, Doherty terminated the allotment which he had in effect for dependents whom he had acquired subse-

quent to February 2, 1951, and he reestablished an allotment to Anna E. Doherty in the amount of $157.10, beginning with the month of October 1952. According to the records of the Department of the Navy this allotment is still active.

At no time subsequent to December 1950, the month following the month Doherty terminated his voluntary allotment to Anna Elizabeth Doherty, and prior to October 31, 1952, was any communication received either from Mrs. Doherty, or from anyone else in her behalf. By a letter dated October 31, 1952, William M. Snyder, an attorney in Atlantic City, N. J., requested that a quarters allotment be made to Mrs. Anna Doherty, retroactive to December 1950. However, before this letter was received, the serviceman himself had terminated the allotment to his second wife and two stepchildren and had established the basic allowance for quarters allotment to Mrs. Anna Elizabeth Doherty.

From the foregoing, certain facts are quite clear: That Mrs. Anna Elizabeth Doherty had knowledge of the divorce action brought by the serviceman against her in Arkansas, yet took no effective action to protect her interests therein; that no communication was received by the Department of the Navy regarding this matter from Mrs. Doherty, or from anyone in her behalf, prior to October 31, 1952.

In the light of the above, it is considered that the Department of the Navy from the beginning properly investigated the facts of this case and took the only possible action commensurate with the orderly administration of the Dependents Assistance Act of 1950 and the interests of the various parties concerned.

The payment by the Government of $3,613.30 would be provided for by H. R. 3245. This Department is not aware of the basis on which the sum of $3,613.30 was computed. However, had there been no divorce action nor discontinuance of quarters allotments to Anna E. Doherty she would have received $3,273.80 during the period covered in the bill. Because she received the payment of $157.10 for the month of October 1952, a month included in the period covered by the bill, the adjusted amount would then be $3,116.70. Of this latter amount, $1,680 would have constituted the serviceman's contribution at the rate of $80 per month. In this connection it is noted that the bill makes no mention that the serviceman's contribution of $80 per month is included in the amount sought to be paid to Mrs. Anna Elizabeth Doherty. It should also be noted that during part of the period for which payment is sought by Mrs. Anna Elizabeth Doherty, a quarters allotment was paid to Geraldine H. Doherty, the wife of record, in the amount of $3,001.30 of which $1,520 constituted Doherty's contribution at the rate of $80 per month.

In view of the foregoing, it is not apparent that the relief claimed is justified and therefore the Department of the Navy recommends against the enactment of H. R. 3245.

The Department of the Navy has been advised by the Bureau of the Budget that there is no objection to the submission of this report to the Congress.

For the Secretary of the Navy.

Sincerely yours,

IRA H. NUNN,
*Rear Aamiral, United States Navy,*
*Judge Advocate General of the Navy.*

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STATE OF NEW JERSEY,
*County of Atlantic, ss:*

Anna Elizabeth Doherty, of full age, being duly sworn, according to law, upon her oath deposes and says:

I presently reside at 2 Woodbine Terrace, in the city of Atlantic City, County of Atlantic, and State of New Jersey.

On or about the 22d day of December 1947 I was married to Joseph F. Doherty in Atlantic City, N. J. At the time of our marriage my husband was in the United States Navy stationed at Pomona, N. J.

Subsequent to our marriage I moved from one place to another with my husband and the last time I lived with him together as man and wife was on January28, 1951.

Just before that, to wit, shortly after the 9th day of October 1950 I received, through the mail, a complaint in equity from the chancery court of Crittenden County, Ark., No. 10540, wherein Joseph F. Doherty had filed a suit for divorce against me. I had taken these papers to my local attorney, William M. Snyder, Esq., in Atlantic City and at my instruction Mr. Snyder had retained counsel by the name of Atlee Harris, Esq., in West Memphis, Ark., for the purpose of

filing an answer defending this suit, asking for alimony pendente lite, suit moneys, and attorney's fees. Certain papers were filed for this purpose and on January 27, 1951, as a result of the actions of my attorney in filing these papers, an order for dismissal was signed by Chancellor W. Leon Smith dismissing the entire suit, without prejudice.

As heretofore mentioned my husband and I lived together as man and wife on January 28, 1951, at which time he came to Atlantic City and asked me, among other things, to consent to allow him to obtain a divorce. This I refused to do and my husband left me at that time with the definite understanding that I would not consent to such a divorce. He did tell me, however, that in the event I did not hear from him or get my moneys on his allotment, I should contact his commanding officer and see why. When I did not receive any word from him after he left at that time, I wrote to his commanding officer and was amazed to receive from him a copy of a decree dated February 2, 1951, in a suit by J. F. Doherty against Anna E. Doherty, No. 10814, dissolving the marriage which heretofore existed between the parties.

I immediately had my attorney, William M. Snyder, contact Mr. Harris of West Memphis, Ark., once again to find out on what grounds and how my husband had gotten the divorce without notice to me and my attorney forthwith wrote a letter to the Naval Air Technical Training Center, Memphis, Tenn., to the attention of E. R. Peck, captain, United States Navy, advising him of our amazement in the obtaining of this divorce and putting him on notice that any marriage which Mr. Doherty might have entered into subsequent to this divorce was a nullity.

At that same time my attorney sent him a copy of a letter which was addressed to Mr. Harris instructing him to set aside the divorce decree.

It was then that I first learned from a letter Mr. Harris sent to Mr. Snyder that a divorce had been granted to my husband (No. 10814) based upon a suit filed by a new attorney in Crittenden County, Ark., and a purported waiver of service and entry of appearance purportedly signed by me before one M. G. Jefferson, a notary public of Shelby County, Tenn., which acknowledgment was taken on January 30, 1951. Such a waiver of service and entry of appearance was never signed by me. Not only have I not signed it but I did not leave Atlantic City, at any time during that period. I particularly was not in Shelby County, Tenn., on January 30, 1951, at that time I was in Atlantic City as stated in the affidavits which have been filed by Betty Ann Wissler, Marie Mattie, Mr. Brady, Mrs. Hoffman, and Mrs. Piccardo in the proceedings to set aside this divorce, substantiating my statements to this effect.

Mr. Harris immediately proceeded to file a petition to vacate this decree of divorce. I believe this was filed sometime in August of 1951. The matter finally came on for hearing in West Memphis, Ark., and on October 1, 1952, an order was signed by Chancellor Leon Smith, of the chancery court, Crittenden County, Ark., setting aside the decree granting a divorce to J. F. Doherty, as plaintiff and Anna E. Doherty as defendant and entered on the 2d of February 1951 and holding it to be null and void and dismissing the complaint filed by J. F. Doherty for divorce.

Subsequent to this action the defendant has filed a new suit in the supreme court of Shelby County, Tenn., in which he then alleged that he was a resident of Millington, Shelby County, Tenn., while in the previous suit he had alleged that he was a resident of Crittenden County, Ark. This suit was likewise dismissed by order of the court, dated January 23, 1953, and the time for an appeal as provided in that order has expired.

During the period in question, between December 1950 to October 31, 1952, I did not receive any allotment checks from the United States Navy to which I was entitled as the lawful wife of Joseph F. Doherty. Prior to this I should have gotten $157.10 per month during that period of time.

ANNA ELIZABETH DOHERTY.

Sworn to and subscribed before me this 8th day of May 1953.

[SEAL] H. RONNIE GOODELMAN,
*Notary Public.*

My commission expires November 8, 1955.

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STATE OF NEW JERSEY,
*County of Atlantic, ss:*

Anna E. Doherty of full age, being duly sworn, according to law, upon her oath deposes and says:

I am the defendant in the within proceedings. I have seen a photostatic copy of what purports to be an entry of appearance and waiver of notice in taking depositions in a suit of *J. F. Doherty* v. *Anna E. Doherty* filed in the Crittenden County chancery court of Arkansas, file 10814.

The signature contained thereon is definitely not mine. I again reaffirm that I was not in Shelby County, Tenn., on January 30, 1951, or on any other day. I do not know M. G. Jefferson, the notary public, or did I ever appear before anyone by that name and acknowledge that I had signed the same affidavit for the purpose outlined or for any other purpose.

ANNA E. DOHERTY.

Sworn to and suscribed before me this 16th day of August 1951.

MILTON M. KAPLAN, *Attorney at Law.*

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STATE OF ARKANSAS,
*County of Crittenden:*

I, Lloyd C. McCuiston, Jr., clerk of the chancery court of said county, do hereby certify that the foregoing 1 page contains a full, true and perfect copy of the answer in chancery cause No. 10814, *J. F. Doherty* v. *Anna E. Doherty* as the same appears of record now on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office, in the town of Marion, this 1st day of May 1953.

[SEAL] LLOYD C. MCCUISTON, Jr., *Clerk.*

CHANCERY COURTROOM

MARION, ARK.

STATE OF ARKANSAS,
*County of Crittenden:*

I, W. Leon Smith, a presiding judge of the chancery court of said county, certify that Lloyd C. McCuiston, Jr., who gave the foregoing certificate, is now, and was at the time of signing same, clerk of said court, and that said court is a court of record, and that his attestation is in due form and his official acts, as such, are entitled to full faith and credit.

Witness my hand, this 2d day of May 1953.

W. LEON SMITH, *Chancellor.*

STATE OF ARKANSAS,
*County of Crittenden:*

I, Lloyd C. McCuiston, Jr., clerk of the chancery court of said county, certify that W. Leon Smith, whose genuine and official signature appears to the above and hereto annexed certificate, is and was at the time of signing the same a presiding chancellor of the chancery court in and for the county and State aforesaid, duly commissioned and qualified, and that all his official acts as such are entitled to full faith and credit.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office, in the town of Marion, this 4th day of May 1953.

[SEAL] LLOYD C. MCCUISTON, Jr., *Clerk.*

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[EE 420]

IN THE CHANCERY COURT OF CRITTENDEN COUNTY, ARK.

No. 10814

*J. F. Doherty, plaintiff,* v. *Anna E. Doherty, defendant*

DECREE

On this 1st day of October 1952, the above-entitled matter coming on to be heard, comes the defendant and petitioner, Anna E. Doherty, by her attorneys, Nance & Nance, and comes the plaintiff and respondent, J. F. Doherty, by his attorneys, Don G. Owens and Ferber Floyd, and by agreement of the parties hereto, this cause is submitted to the court upon the petition of the defendant, Anna E. Doherty, and the amendment thereto, the response of the plaintiff, J. F. Doherty, and the response to the amendment thereto, and the court after hearing the evidence herein, the statement of counsel, finds that at the time of the filing

of the complaint, J. F. Doherty as plaintiff versus Anna E. Doherty as defendant, and the granting of the decree on the 2d day of February 1951, that the plaintiff J. F. Doherty was not a bona fide resident of Crittenden County, Ark., and that the court was without jurisdiction to try said cause and that the decree granted on the 2d day of February 1951 should be set aside, canceled, and held to be null and void and that the complaint herein should be dismissed.

It is, therefore, by the court considered, ordered, and decreed that the decree granting a divorce to J. F. Doherty as plaintiff and Anna E. Doherty as defendant, on the 2d day of February 1951, be and the same is hereby set aside, canceled, and held to be null and void.

It is further considered, ordered, and decreed that the complaint filed by J. F Doherty be and the same is hereby dismissed.

W LEON SMITH, *Chancellor.*

Approved:

NANCE & NANCE,
By CECIL B. NANCE,
*Attorneys for Defendant and Petitioner.*
DON G. OWENS, Jr.,
FERBER FLOYD,
*Attorneys for Plaintiff and Respondent.*

STATE OF ARKANSAS,
*County of Crittenden:*

I, Lloyd C. McCuiston, Jr., clerk of the chancery court of said county, do hereby certify that the foregoing 1 page contains a full, true and perfect copy of the decree in chancery cause No. 10814, *J. F. Doherty* v. *Anna E. Doherty*, recorded in Chancery Record Book EE at page 420 as the same appears of record now on file in my office

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office, in the town of Marion, this 1st day of April, 1953.

[SEAL] LLOYD C. MCCUISTON, Jr., *Clerk.*

CHANCERY COURTROOM

MARION, ARK.

STATE OF ARKANSAS,
*County of Crittenden:*

I, W. Leon Smith, a presiding judge of the chancery court of said county, certify that Lloyd C. McCuiston, Jr., who gave the foregoing certificate, is now, and was at the time of signing same, clerk of said court, and that said court is a court of record, and that his attestation is in due form, and his official acts, as such, are entitled to full faith and credit.

Witness my hand, this 2d day of May, 1953.

W. LEON SMITH, *Chancellor.*

STATE OF ARKANSAS,
*County of Crittenden:*

I, Lloyd C. McCuiston, Jr., clerk of the chancery court of said county, certify that W. Leon Smith, whose genuine and official signature appears to the above and hereto annexed certificate, is and was at the time of signing the same, a presiding chancellor of the chancery court in and for the county and State aforesaid, duly commissioned and qualified, and that all his official acts as such are entitled to full faith and credit.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office, in the town of Marion, this 4th day of May, 1953.

[SEAL] LLOYD C. MCCUISTON, JR., *Clerk.*

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IN THE CRITTENDEN COUNTY CHANCERY COURT, ARK.

No. 10814

*J. F. Doherty, plaintiff,* v. *Anna E. Doherty, defendant*

DECREE

On this the 2d day of February 1951 the above said cause is submitted to the court upon the complaint of the plaintiff, written entry of appearance of the defendant, depositions of J. F. Doherty and R. G. Wilson and the agreement of all parties that said cause may be submitted to the court in vacation.

From which the court finds that the plaintiff has been a resident of this State and county for more than 3 months next before the filing of this suit, and that the charge of willful desertion for a space of 1 year has been sustained by the evidence, and the plaintiff is entitled to a divorce on that grounds.

It is, therefore, considered, ordered and decreed by the court that the bonds of matrimony now existing between the plaintiff J. F. Doherty and the defendant Anna E. Doherty be and they are hereby canceled, set aside and for naught held.

W. LEON SMITH, *Chancellor.*

STATE OF ARKANSAS,
*County of Crittenden:*

I, Lloyd C. McCuiston, Jr., clerk of the above court within and for that State and county aforesaid, do hereby certify that the above decree of divorce granted to J. F. Doherty from Anna E. Doherty is a true and complete copy of the original now of record in this office.

Witness my hand as clerk of the above court this the — day of February 1951.

——— ———, *Clerk.*

STATE OF ARKANSAS,
*County of Crittenden:*

I, Lloyd C. McCuiston, Jr., clerk of the chancery court of said county, do hereby certify that the foregoing one page contains a full, true, and perfect copy of the decree in chancery cause No. 10814, *J. F. Doherty* v. *Anna E. Doherty*, recorded in Chancery Record Book BB at page 533 as the same appears of record now on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office, in the town of Marion, this 1st day of May 1953.

[SEAL] LLOYD C. MCCUISTON, Jr., *Clerk.*

CHANCERY COURTROOM

MARION, ARK.

STATE OF ARKANSAS,
*County of Crittenden:*

I, W. Leon Smith, a presiding judge of the chancery court of said county, certify that Lloyd C. McCuiston, Jr., who gave the foregoing certificate, is now, and was at the time of signing same, clerk of said court, and that said court is a court of record, and that his attestation is in due form, and his official acts, as such, are entitled to full faith and credit.

Witness my hand, this 2d day of May 1953.

W. LEON SMITH, *Chancellor.*

STATE OF ARKANSAS,
*County of Crittenden:*

I, Lloyd C. McCuiston, Jr., clerk of the chancery court of said county, certify that W. Leon Smith, whose genuine and official signature appears to the above and hereto annexed certificate, is and was at the time of signing the same a presiding chancellor of the chancery court in and for the county and State aforesaid, duly commissioned and qualified, and that all his official acts as such are entitled to full faith and credit.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office, in the town of Marion, this 4th day of May 1953.

[SEAL] LLOYD C. MCCUISTON, Jr., *Clerk.*

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IN THE CHANCERY COURT OF CRITTENDEN COUNTY, ARK.

No. 10540

*Joseph F. Doherty, plaintiff,* v. *Anna Elizabeth Doherty, defendant*

DEFENDANT'S MOTION FOR ALIMONY PENDENTE LITE, SUIT MONEY AND ATTORNEYS' FEES

Comes the defendant and moved the court to direct the plaintiff to make payment of funds for her maintenance pending this action, for funds to be used in the necessary defense of this action, for her costs and for a reasonable fee for her attorneys and, in support of said motion states:

That she is unable and without funds to properly defend this action; that the plaintiff has a good and steady income and steady employment which is sufficient and ample to maintain this defendant and to pay the necessary costs, attorneys' fees, and expenses of a defense to this action.

Wherefore, defendant, Anna Elizabeth Doherty, prays that this court enter its order requiring the plaintiff, Joseph F. Doherty to pay a reasonable sum to the defendant during the pendency of this action for maintenance, for suit money, costs, and reasonable attorneys' fees for her attorneys and that no further proceedings be had herein until said sums are paid or secured and that the defendant be not required to plead further herein until said sums have been paid or secured by the plaintiff.

ATLEE HARRIS,
*Attorney for defendant.*

STATE OF ARKANSAS,
*County of Crittenden:*

I, Lloyd G. McCuiston, Jr., clerk of the chancery court of said county, do hereby certify that the foregoing one page contains a full, true and perfect copy of the defendant's motion for alimony pendente lite, suit money, and attorneys' fees in chancery cause No. 10540, *Joseph F. Doherty* v. *Anna Elizabeth Doherty* as the same appears of record now on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office, in the town of Marion, this 1st day of May 1953.

[SEAL] LLOYD C. MCCUISTON, Jr., *Clerk.*

CHANCERY COURTROOM

MARION, ARK.

STATE OF ARKANSAS,
*County of Crittenden:*

I, W. Leon Smith, a presiding judge of the chancery court of said county, certify that Lloyd C. McCuiston, Jr., who gave the foregoing certificate, is now, and was at the time of signing same, clerk of said court, and that said court is a court of record, and that his attestation is in due form, and his official acts, as such, are entitled to full faith and credit.

Witness my hand, this 2d day of May 1953.

W. LEON SMITH, *Chancellor.*

STATE OF ARKANSAS,
*County of Crittenden:*

I, Lloyd C. McCuiston, Jr., clerk of the chancery court of said county, certify that W. Leon Smith, whose genuine and official signature appears to the above and hereto annexed certificate, is and was at the time of signing the same a presiding chancellor of the chancery court in and for the county and State aforesaid, duly commissioned and qualified, and that all his official acts as such are entitled to full faith and credit.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office, in the town of Marion, this 4th day of May 1953.

[SEAL] LLOYD C. MCCUISTON, Jr., *Clerk*

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IN THE CHANCERY COURT OF CRITTENDEN COUNTY, ARK.

No. 10540

*Joseph F. Doherty, plaintiff,* v. *Anna Elizabeth Doherty, defendant*

ORDER FOR DISMISSAL

Now on this 27th day of January 1951, is presented to the court the motion of the plaintiff, Joseph F. Doherty, praying that this action be dismissed without prejudice.

It is therefore considered, ordered, and adjudged that this action is dismissed on the motion of the plaintiff without prejudice.

W. LEON SMITH, *Chancellor.*

STATE OF ARKANSAS,
*County of Crittenden:*

I, Lloyd C. McCuiston, Jr., clerk of the chancery court of said county, do hereby certify that the foregoing 1 page contains a full, true, and perfect copy of the order for dismissal in chancery cause No. 10540, *Joseph F. Doherty* v. *Anna Elizabeth Doherty* as the same appears of record now on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office, in the town of Marion, this 1st day of May 1953.

[SEAL] LLOYD C. MCCUISTON, Jr., *Clerk.*

CHANCERY COURTROOM

MARION, ARK.

STATE OF ARKANSAS,
*County of Crittenden:*

I, W. Leon Smith, a presiding judge of the chancery court of said county, certify that Lloyd C. McCuiston, Jr., who gave the foregoing certificate, is now, and was at the time of signing same, clerk of said court, and that said court is a court of record, and that his attestation is in due form, and his official acts, as such, are entitled to full faith and credit.

Witness my hand, this 2d day of May 1953.

W. LEON SMITH, *Chancellor.*

STATE OF ARKANSAS,
*County of Crittenden:*

I, Lloyd C. McCuiston, Jr., clerk of the chancery court of said county, certify that W. Leon Smith, whose genuine and official signature appears to the above and hereto annexed certificate, is and was at the time of signing the same a presiding chancellor of the chancery court in and for the county and State aforesaid, duly commissioned and qualified, and that all his official acts as such are entitled to full faith and credit.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office, in the town of Marion, this 4th day of May 1953.

[SEAL] LLOYD C. MCCUISTON, Jr., *Clerk.*

IN THE CRITTENDEN COUNTY CHANCERY COURT, ARK.

No. 10814

*J. F. Doherty, plaintiff,* v. *Anna E. Doherty, defendant*

COMPLAINT IN EQUITY

Comes the above-named plaintiff and for her cause of action against the above-named, defendant, states;

That he is a resident of this State and county and has been for more than 3 months next before the filing of this suit, and that the cause of action herein sued on occurred within 5 years next before the filing of this complaint.

Plaintiff states that he and the said defendant married on December 22, 1947, and that they separated on July 21, 1948, and that there were no children born to this marriage.

Plaintiff states that the said defendant offered such indignities to him that to render his condition in life intolerable. And that the said defendant deserted him for more than 1 year without cause.

Wherefore plaintiff prays that the bonds of matrimony now existing between he and the said defendant Anna E. Doherty be canceled, set aside and for naught held and for all relief which to the court may seem proper and right.

W. M. BURNETT,
*Solicitor for Plaintiff.*

I hereby state under oath that, to the best of my knowledge and belief, the defendant Anna E. Doherty is a nonresident of this State.

_____.

Subscribed and sworn to this the — day of — 1951.

_____, *Clerk.*

IN THE CRITTENDEN COUNTY CHANCERY COURT, ARK.

*J. F. Doherty, plaintiff,* v. *Anna E. Doherty, defendant*

WARNING ORDER

The defendant Anne E. Doherty is hereby warned to appear in this court within 30 days and answer the complaint of the plaintiff J. F. Doherty.

———— ————, *Clerk.*

I hereby appoint Julian Fogleman as attorney for the nonresident defendant Anna E. Doherty.

———— ————, *Clerk.*

I accept the above appointment.

————— ————,
*Attorney ad litem.*

STATE OF ARKANSAS,
*County of Crittenden, ss:*

I, Lloyd C. McCuiston, Jr., clerk of the chancery court of said county, do hereby certify that the foregoing 1 page contains a full, true, and perfect copy of the complaint in equity in chancery cause No. 10814, *J. F. Doherty* v. *Anna E. Doherty* as the same appears of record now on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office, in the town of Marion, this 1st day of May 1953.

[SEAL] LLOYD C. MCCUISTON, Jr., *Clerk.*

CHANCERY COURTROOM

MARION, ARK.

STATE OF ARKANSAS,
*County of Crittenden, ss:*

I, W. Leon Smith, a presiding judge of the chancery court of said county, certify that Lloyd C. McCuiston, Jr., who gave the foregoing certificate, is now, and was at the time of signing same, clerk of said court, and that said court is a court of record, and that his attestation is in due form, and his official acts, as such, are entitled to full faith and credit.

Witness my hand, this 2d day of May 1953.

W. LEON SMITH, *Chancellor.*

STATE OF ARKANSAS,
*County of Crittenden, ss:*

I, Lloyd C. McCuiston, Jr., clerk of the chancery court of said county, certify that W. Leon Smith, whose genuine and official signature appears to the above and hereto annexed certificate, is and was at the time of signing the same a presiding chancellor of the chancery court in and for the county and State aforesaid, duly commissioned and qualified, and that all his official acts as such are entitled to full faith and credit.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office, in the town of Marion, this 4th day of May 1953.

[SEAL] LLOYD C. MCCUISTON, Jr., *Clerk.*

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Calendar No. 1918

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1898

# ESTATE OF NEIL McLEOD SMITH

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 3526]

The Committee on the Judiciary, to which was referred the bill (H. R. 3526) for the relief of the estate of Neil McLeod Smith, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE

The purpose of the proposed legislation is to pay the estate of Neil McLeod Smith $7,500, in full settlement of all claims of the heirs and next of kin of said Smith against the United States arising out of the death of Smith, who was killed in Savannah, Ga., on December 25, 1942, when he was struck by a bullet negligently fired by a member of the Armed Forces, who, as a military policeman, was assisting in making an arrest some distance away from where the deceased was standing.

### STATEMENT

The records of the War Department (now Department of the Army) show that on December 25, 1942, at about 6:40 p. m., on the corner of Gaston and West Broad Streets, Savannah, Ga., at the request of a city policeman, Pvt. William K. Williams, Army serial No. 34127311, while acting within the scope of his employment as a military policeman, attempted, with the aid of other military policemen, to keep back a crowd of citizens who were apparently attempting to rescue an alleged disturber of the peace who had been arrested by the city policeman and was being held awaiting arrival of a patrol wagon. It appears that Private Williams properly had his pistol

in his hand, and the pistol was accidentally discharged, the bullet striking Neil McLeod Smith, an innocent bystander, who had taken no part in the demonstration. The bullet from the pistol of Private Williams passed through the body of Mr. Smith and resulted in his death.

Mr. Smith was 61 years of age at the time of his death, and left surviving 3 sons and 2 daughters, ranging in age from 35 to 47, respectively. At the time of his death, Mr. Smith was working as a carpenter at a salary of from $50 to $75 per week. The Georgia statutes permit an unlimited recovery by the heirs or next of kin for death by wrongful act.

Accordingly, the committee recommends favorable consideration of the bill, without amendment.

The committee has retained the 10-percent attorney fee provision, in view of the fact that information contained in the files indicates that an attorney has performed services in connection with this claim.

Attached hereto and made a part of this report is a letter received from the Department of the Army in connection with a similar bill of the 83d Congress.

DEPARTMENT OF THE ARMY,
*Washington, D. C., March 25, 1954.*

Hon. CHAUNCEY W. REED:
*Chairman, Committee on the Judiciary,*
*House of Representatives.*

DEAR MR. REED: Reference is made to your letter enclosing a copy of H. R. 7587, 83d Congress, a bill for the relief of the estate of Neil McLeod Smith, and requesting a report on the merits of the bill.

This bill provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the estate of Neil McLeod Smith, the sum of $50,000. The payment of such sum shall be in full settlement of all claims of the heirs and next of kin of Neil McLeod Smith against the United States arising out of the death of the said Neil McLeod Smith, who was killed in Savannah, Ga., on December 25, 1942, when he was struck by a bullet negligently fired by a member of the Armed Forces who (as a military policeman) was assisting in making an arrest some distance away from where the said Neil McLeod Smith was standing."

The records of the War Department (now Department of the Army) show that on December 25, 1942, at about 6:40 p. m., on the corner of Gaston and West Broad Streets, Savannah, Ga., at the request of a city policeman, Pvt. William K. Williams, Army serial No. 34127311, while acting within the scope of his employment as a military policeman, attempted, with the aid of other military policemen, to keep back a crowd of citizens who were apparently attempting to rescue an alleged disturber of the peace who had been arrested by the city policeman and was being held awaiting arrival of a patrol wagon. It appears that Private Williams properly had his pistol in his hand, and the pistol was accidentally discharged, the bullet striking Neil McLeod Smith, an innocent bystander, who had taken no part in the demonstration. The bullet from the pistol of Private Williams passed through the body of Mr. Smith and resulted in his death.

This Department has been advised by the office of the author of H. R. 7587 that Mr. Smith was 61 years of age at the time of his death and left surviving 3 sons and 2 daughters ranging in age from 35 to 47 years of age, respectively. The Department has also been informed that at the time of Mr. Smith's death he was working as a carpenter at a salary of from $50 to $75 per week.

On March 15, 1944, James F. Smith, the son of Neil McLeod Smith, filed a claim with the Department in the amount of $355.95 (burial expenses for Neil McLeod Smith). The claim was approved in the amount of $340.95 and was paid on September 11, 1944.

The estate of Neil McLeod Smith has no remedy under the act of July 3, 1943 (57 Stat. 372; 31 U. S. C. 223b), as amended, which states, in pertinent part: "The amount allowed on account of personal injury or death shall be limited to reasonable medical, hospital, and burial expenses actually incurred * * *." The estate of Mr. Smith has no remedy under the Federal Tort Claims Act (60

Stat. 843; 28 U. S. C. 931), as revised and codified by the act of June 25, 1948 (62 Stat. 933; 28 U. S. C. 1346 (b)), and as amended by Public Law 55, 81st Congress, approved April 25, 1949, for the reason that the act giving rise to this claim occurred prior to January 1, 1945. There is no other statute available to the Department of the Army under which any amount may be paid administratively to the estate of Mr. Smith on account of his death.

The evidence in this case clearly establishes that the death of Neil McLeod Smith was not caused by any fault or negligence on his part, but resulted solely from a bullet being accidentally discharged from the pistol of an enlisted man of the Army while acting within the scope of his employment. Under the circumstances of this case, it is the view of the Department of the Army that an award in a reasonable amount should be granted to the estate of Mr. Smith on account of his death. The proposed award of $50,000 provided for in H. R. 7587 appears to be somewhat excessive. After a careful consideration of all of the facts in this case it is believed that an award to the estate of Neil McLeod Smith in the amount of $7,500 would constitute a fair and reasonable settlement for damages on account of his death. The Department, therefore, would have no objection to the enactment of this bill if it should be amended to provide for an award in the amount of $7,500.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

ROBERT T. STEVENS,
*Secretary of the Army.*

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Calendar No. 1919

84TH CONGRESS, 2d Session } SENATE { REPORT No. 1899

# LT. COL. GEORGE H. CRONIN

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 4634]

The Committee on the Judiciary, to which was referred the bill (H. R. 4634) for the relief of Lt. Col. George H. Cronin, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE

The purpose of the proposed legislation is to relieve Lt. Col. George H. Cronin (Air Force service No. AO-132251) of all liability to refund to the United States any sums representing certain overpayments for longevity and flying pay made to him during the period beginning August 1, 1942, and ending June 1, 1949.

### STATEMENT

Colonel Cronin's record of military service begins in August of 1917 when he enlisted and carries through until he resigned from the Colorado National Guard Reserve on March 19, 1928. On February 4, 1941, he was made captain, Air Corps, Officer Reserve Corps, and was called to extended active duty on June 14, 1942.

The basis of this claim is Colonel Cronin's honest and sincere belief that he had some sort of military status during the period from March 1928 to February 1941, and because of it was entitled to 23 years longevity pay.

The Air Force contends that during the period from 1942 through 1949 Colonel Cronin claimed and accepted $15,410.37 in longevity and flying pay to which he was not entitled, stating that he actually had only 10 years military service for longevity pay purposes instead of the 23 he believed he had.

It appears that Colonel Cronin resigned his commission in the Colorado National Guard Reserve in 1928 to apply for and accept a commission in the Officer Reserve Corps, and that he had no intention of disassociating himself from the military service. It appears from the files (Petition to 84th Cong., February 15, 1955, p. 3, pars. 10 and 11) that his commission was never transferred from one organization to the other, so that a break in service evidently resulted, although Colonel Cronin was not aware of this and it would appear that it was an administrative error of the Army rather than any fault of Colonel Cronin's. He states in his letter that he believed he had some military status constantly from January 15, 1921, although the Air Force records do not show that he was assigned to any military organization, on either active or inactive status, from March 19, 1928, until February 1941, the period for which he claimed longevity. The files also show that he wrote a letter inquiring about his commission but there is nothing to indicate that he ever received an answer to it.

There is no question of Colonel Cronin's good faith in making claim for the amounts which were paid him, and the matter was under investigation for 7 years before the amount of overpayment of $15,410.37 was arrived at. During a good part of this time Colonel Cronin was out of the country, which made it very difficult for him to check the records regarding his military status during the period in question.

In a letter written in March 1950 by Col. Donald P. Mayhew of the Staff Judge Advocate's Office, United States Air Force, Lowry Air Force Base, Denver, Colo., it is stated:

> (5) Effect of evidence:
> (*b*) There is insufficient evidence to controvert the accused's statement that he regarded himself as being on some sort of Reserve status between 1928 and 1942 * * *
> (*c*) The accused is entitled to rely upon a finance officer as being fully advised or at least better advised than the accused with respect to longevity; and if a finance officer did * * * conclude that the accused was entitled to longevity during the period of 1928 to 1942, it does not seem that it is to be expected that the accused should question the decision of one who is supposed to have a technical knowledge of the subject.
> (6) Sufficiency of the evidence as to the specifications alleging false claims for flying pay:
> (*c*) The evidence does not establish, by inference or otherwise, that the accused knew or reasonably should have known that the claims for flying pay were false or fraudulent. In fact, the contrary is adequately established by the evidence.

The Judiciary Committee of the House of Representatives made an exhaustive investigation of the facts relative to this claim. That committee concluded that this officer acted in the utmost good faith in claiming and accepting pay in the amount in question and that he honestly and sincerely believed that he was entitled to it. That committee's files contain letters of high praise and commendation from Colonel Cronin's superior officers for his outstanding services in various line assignments and it is obvious that he performed his duties in a highly proficient and patriotic manner.

The committee is informed that Colonel Cronin has undertaken to try to pay off the indebtedness claimed in installments of $50 monthly, and as of January 1, 1955, the amount had been reduced to $14,910.37. The committee is informed that the claimant has three children in college which constitutes a large expense and, in addition, since he is

now 58 years of age, it is apparent that he cannot hope to liquidate the debt before his retirement.

The committee, therefore, agrees with the conclusions reached by the House Judiciary Committee that it would be an undue hardship to force this officer to repay amounts paid to him, since the situation developed through a set of circumstances stemming from honest mistakes all around, for which no one can justifiably be held to account.

The committee, therefore, recommends favorable consideration of H. R. 4634, without amendment.

Attached hereto and made a part hereof is the report of the Department of the Air Force and other evidentiary data relating to this claim.

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DEPARTMENT OF THE AIR FORCE,
OFFICE OF THE SECRETARY,
*Washington, May 6, 1955.*

Hon. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,*
*House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your request to the Department of the Air Force for a report on H. R. 4634, 84th Congress, a bill for the relief of Lt. Col. George H. Cronin, United States Air Force.

The purpose of the bill is to relieve Lieutenant Colonel Cronin of his liability to refund to the United States any sums representing certain overpayments for longevity and flying pay made to him during the period beginning August 1, 1942, and ending June 1, 1949. This sum, which he is reducing at the rate of $50 per month, was in the amount of $14,910.37 on January 1, 1955.

Lieutenant Colonel Cronin began his military service as an enlisted man on August 26, 1917, and served in that capacity until he entered upon active duty as a second lieutenant in the Air Service on June 25, 1918. He was honorably discharged for the convenience of the Government May 23, 1919. He was appointed second lieutenant, Air Service, Officer Reserve Corps, which he accepted January 15, 1921. He was assigned to one type or another of a federally recognized military organization until March 19, 1928, when his resignation from the Colorado National Guard Reserve was accepted. From then until February 4, 1941, when he accepted an appointment as captain, Air Corps, Officer Reserve Corps, he was not a member of any federally recognized military service either in an active or inactive status.

He was called to extended active duty June 14, 1942, and remained on active duty thereafter. During the period June 14, 1942, through June 30, 1949, Lieutenant Colonel Cronin claimed and accepted $15,410.37 more in longevity and flying pay than he was entitled to. This was paid upon the claim that he had had, at the time he entered into extended active duty in 1942, 23 years of military services for pay purposes. Actually, he had had only 10 years.

The basis of Lieutenant Colonel Cronin's request for relief by a private bill is that he resigned his commission in the Colorado National Guard Reserve to apply for and accept a commission in the Officer Reserve Corps and that he never intended to disassociate himself from the military service. His request for a commission in the Officer Reserve Corps was denied for lack of vacancy. He contends that he was of the opinion that he had had some type of military status constantly from January 15, 1921.

The Department of the Air Force, in its previous investigations, has found no evidence of bad faith on the part of Lieutenant Colonel Cronin. Therefore, this Department refrains from comment on the merits of the bill.

The Bureau of the Budget has advised that it does not object to the submission of this report.

Sincerely yours,

DAVID S. SMITH,
*Assistant Secretary of the Air Force.*

HEADQUARTERS, 13TH AIR FORCE,
*San Francisco, Calif., February 15, 1955.*

Subject: Request for assistance in preparation of a bill for relief before the 84th Congress of the United States.

To: Director of Legislative Liaison, Office of the Secretary of the Air Force, Washington 25, D. C.

1. Attached is a petition from Lt. Col. George H. Cronin, AO132251, Headquarters, 13th Air Force, to the 84th Congress, for relief from an indebtedness to the Government in the amount of $15,410.37. This considerable amount represents the final computation by the General Accounting Office in a long involved case covering overpayment of longevity and flying pay for the period August 1, 1942, to June 1, 1949. A special trip on annual leave, from the Far East is being made by Lieutenant Colonel Cronin in an attempt to clear this account.

2. During 1951, a bill for relief was actually in the drafting stage, covering this same case, in the office of Maj. Gen. Miles H. Reber, Legislation Liaison Division, who had agreed to aid with the presenting of the bill before Congress. Before the bill was presented, however, advices were to first send the entire case to the newly created Air Force Board of Military Records.

3. Accordingly, work on the bill was halted and application made, January 17, 1952, to the Personnel Records Service Division, Air Adjutant General's Office, Headquarters, United States Air Force, for study and evaluation by the Military Records Board.

4. The Assistant Secretary of the Air Force, December 19, 1952, approved the board corrections in flying records, thus canceling a part of the indebtedness, but denied relief from overpayments for longevity. Finally, on February 24, 1954, based upon findings of the Board, the Settlements Division, Air Force Finance Center, Denver, Colo., advised as to the amount of overpayment due the Government, $15,410.37. (See enclosure 1.) Departments interested in this case have suggested congressional relief as a means of correcting an unfortunate situation which had developed through the fault of no one.

5. Attached as enclosure 2 is a copy of the 1951 relief bill drawn up in General Reber's office in the amount of $23,932.64. Subsequent study by the Military Records Board and by the General Accounting Office reduced the account during 1954 to the firm figure of $15,410.37.

6. Periodic payments are now being made toward this account. I am on record as being willing to repay to the best of my ability and resources. However, it would be impossible to fully repay this amount of money during the remainder of my service career. I am now 58 years of age. Already pressure is being exerted by Government collection agencies to effect settlement before retirement. Moreover, because of limited active service (15 years), there will not be appreciable retirement funds to apply on this account.

7. Aid is earnestly sought, therefore, for assistance in preparing a relief petition before the Congress now in session. Under the conditions, it has been difficult at time to creditably carry on assigned duties. Three children are now in college in the United States.

8. After 7 years of study and investigation, the departments of Government interested in this case have now agreed upon the amount of overpayment and the necessity for repayment. This long research pointed up the lack of Reserve organization records during the period of comparative inactivity between World Wars I and II, giving frequent difficulties in similar investigation involving other reservists.

9. I do not particularly enjoy the thought of seeking cancellation of a debt justly determined to be due the Government and of being obliged to admit inability to fully pay, except that I honestly feel that I have more than earned any past overpayments established by the accountants. Thinking back upon the hazardous situations and the fears and miseries during those active war years, it is difficult to rationalize being paid too much for the effort expended.

GEORGE H. CRONIN,
*Lieutenant Colonel, United States Air Force.*

A PETITION TO THE 84TH CONGRESS OF THE UNITED STATES BY LT. COL. GEORGE H. CRONIN, AO132251, UNITED STATES AIR FORCE, IN THE AMOUNT OF $15,410.37, AS THE RESULT OF OVERPAYMENT OF LONGEVITY AND FLYING PAY, FROM AUGUST 1, 1942, TO JUNE 1, 1949

HEADQUARTERS, 13TH AIR FORCE, CLARK AIR FORCE BASE,
*Philippines, February 15, 1955.*

*General:*

1. This petition being presented is the result of an investigation begun during 1949 by the United States Air Force into alleged overpayment of flying pay and longevity pay to Lt. Col. George H. Cronin, AO132251, for the period August 1, 1942, to June 1, 1949. Because of the complicated nature of this case, involving records reading back through World War I, National Guard and Organized Reserve peacetime service, and active service in World War II, the exact amount of and determination of overpayment was not finally arrived at until 1954.

2. The overpayment as eventually computed by the General Accounting Office, Army Audit Branch, is $15,410.37. This considerable amount was partly the result of legal and financial misinterpretations of the extent of Reserve time by a succession of paymasters and other administrative personnel, based upon incomplete records received overseas during wartime. Subject officer remained overseas from 1942 until 1947, and opportunities for personally checking past records were not as readily available as in the United States. The element of fraud, at first introduced into the investigation, was eliminated early during the study. (See exhibit 1.)

*Case history:*

3. During 1949–51, Lieutenant Colonel Cronin made a series of visits, on annual leave and at his own expense, to research into old records of every department in the Denver, St. Louis, and Washington areas that might be concerned in any manner with this case. In every instance, sympathetic and intelligent cooperation was found. Congressional relief was generally suggested as a final means of correcting an unfortunate situation which had developed through the fault of no one. A bill for relief was actually in the drafting stage during 1951, in the office of Maj. Gen. Miles H. Reber, Legislation Liaison Division, who had agreed to aid with the presentation of the bill before Congress.

4. However, before the bill was presented, advices from the Finance Comptroller's Office, in the Pentagon, were to first petition the recently created Air Force Board for Correction of Military Records, under provisions of AFR 31–3, February 15, 1949. Accordingly, presentation before Congress was halted and application made January 17, 1952, to the Personnel Records Service Division, Air Adjutant General's Office, Headquarters, United States Air Force, for study and evaluation of the case. Attached as exhibit 2 is the information as presented to the Board, January 17, 1952.

5. Under date of December 19, 1952, the Assistant Secretary of the Air Force approved certain recommendations made by the Board. Relief from indebtedness representing overpayments for longevity pay was denied, but personnel records were corrected to show entitlement to flying pay for the period in question. (See exhibit 3.) Finally, on February 24, 1954, the Settlements Division, Air Force Finance Center, Denver, Colo. based upon the findings of the Board for Correction of Military Records, advised as to the final amount of overpayment due the Government, $15,410.37.

*Petition for relief:*

6. Periodic monthly payments are now being made toward this account. Subject officer is on record as being willing to repay to the best of his ability and resources. However, it would be impossible to fully repay this amount of money during the remainder of his service career. He is now 58 years of age, and can serve but 2 more years under Air Force regulations. Already pressure is being exerted by Government collection agencies to effect settlement before retirement. (See exhibit 4.) Moreover, because of limited active service (15 years), there will not be appreciable retirement funds to apply on this account.

7. Petition is earnestly sought for favorable congressional consideration in this case, based upon hardship and inability to pay. For approximately a year, Lieutenant Colonel Cronin's salary was entirely withheld except rental and subsistence allowances. During that time, because of six dependents, his wife was obliged to seek employment. Under the conditions it has been difficult at times for subject officer to creditably carry out assigned duties. Presently, three children are at college in the United States. Included in the overpayment are 5 years

of overseas duty. Thinking back upon the hazardous situations and the fears and miseries during these active war years, it is difficult to rationalize the possibility of being paid too much for the effort expended.

8. Petitioner is a graduate of the Colorado School of Mines (1926), and has recently received a master's degree from the University of the Philippines (1955); previous work at Johns Hopkins University (1915–17), and George Washington University (1941); service courses in engineering at the Air Force Institute of Technology at Wright-Patterson Air Force Base and at Fort Belvoir; 15 years diversified civilian engineering; 15 years active service with the Army Air Force and the United States Air Force; a participant of World War I and II. Intermittent military flying since 1918 either in active service or with the Reserve.

9. Lieutenant Colonel Cronin has been on foreign assignment in the Philippines since 1952. He will proceed to Washington during February 1955 in an attempt to resubmit a bill for relief before the 84th Congress.

10. Although it has now been administratively shown that there was a break in the Organized Reserve time, subject officer is not yet completely satisfied that he was not on some type of Reserve status, despite the evidence of lack or records. Moreover, if a break in service did actually occur (upon which this entire case depends), such a break would seem to be caused more by administrative error than by the desire of Lieutenant Colonel Cronin to sever his service conditions.

11. The records show that he acted in good faith by resigning a National Guard Commission in order to be automatically reinstated in the Air Service Reserve, where he had previously been commissioned before transferring to active flying with the National Guard. It now appears that his commission was never transferred from the one organization to the other, so that a definite break in service and longevity evidently resulted.

12. After 7 years of study and investigation, the departments of Government interested in this case have now agreed upon the amount of overpayment, and the necessity for repayment. This long research pointed up the lack of Reserve Organization records during the period of comparative inactivity between World Wars I and II, giving frequent difficulties in similar investigations involving other reservists.

13. I do not particularly enjoy the thought of seeking cancellation of a debt justly determined to be due the Government, and of being obliged to admit inability to fully pay, except that I honestly feel that I have more than earned any past overpayments established by the accountants. Thinking back upon the hazardous situations and the fears and miseries during those active war years, it is difficult to rationalize being paid too much for the effort expended. Annual leave taken since 1949, during the past 6 years, has generally been spent in the interests of this case.

GEORGE H. CRONIN,
*Lieutenant Colonel, United States Air Force.*

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Calendar No. 1920

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1900

# JOHN L. BOYER, JR.

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 5633]

The Committee on the Judiciary, to which was referred the bill (H. R. 5633) for the relief of John L. Boyer, Jr., having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

### PURPOSE

The purpose of the proposed legislation is to pay to John L. Boyer, Jr., 5454 Mary Lane Drive, San Diego, Calif., the sum of $496.89, in full settlement of all claims against the United States for the loss sustained by him as a result of damage to and destruction of his personal property in a fire that occurred in the warehouse of the Buckner Transfer & Storage Co., 2301 Mills Street, El Paso, Tex., on June 3, 1954.

### STATEMENT

On May 19, 1953, while the claimant, then captain, John L. Boyer, Jr., was stationed at Fort Bliss, Tex., he received orders directing him to proceed to his home of record at San Diego and releasing him from further active duty. Thereafter, on orders of the transportation officer at Fort Bliss, the claimant's household goods were stored in the warehouse of the Buckner Transfer & Storage Co., 2301 Mills Street, El Paso, Tex., on May 26, 1953. During the night of June 3, 1953, a fire broke out in the warehouse, resulting in extensive damage to and destruction of various property stored therein, including the household goods belonging to Captain Boyer. Captain Boyer subsequently was released from active duty and on September 21, 1954, filed a claim with the Department of the Army under the provisions of the Military Personnel Claims Act of 1945 (59 Stat. 225; 31 U. S. C. 222c) for

reimbursement of his loss in the amount of $4,075.83. This claim was screened by the Department of the Army under regulations prescribed by the Secretary in accordance with the provisions of the Military Personnel Claims Act. The Department determined that the claim was meritorious in the amount of $2,996.89. Under the Military Personnel Claims Act, however, the maximum which may be paid administratively is $2,500.

Captain Boyer's claim has been allowed to that extent and a check in that amount has been sent to him. There remains a balance of damages sustained by the claimant in the sum of $496.89 for which he has not been compensated.

The storage company in whose warehouse Captain Boyer's goods were stored has denied liability for the loss but the Department of Justice has under consideration the possibility of instituting action against that company or the insurer so that a clause was inserted in the legislation as it passed the House of Representatives protecting the right, title, and interest in any claim which the Government has as the result of this fire.

The committee believes that this legislation should be favorably considered. It is similar to a number of other claims heretofore presented to the committee in other Congresses and approved, several of which are mentioned in the report of the Department of the Army.

Attached hereto and made a part hereof is the report of the Department of the Army in connection with this claim.

DEPARTMENT OF THE ARMY,
*Washington, D. C., April 13, 1955.*

Hon. SAM RAYBURN,
*Speaker of the House of Repressntatives.*

DEAR MR. SPEAKER: There is enclosed herewith a draft of a bill for the relief of John L. Boyer, Jr. The submission of this proposed legislation is in accordance with procedures approved by the Secretary of Defense.

The purpose of this proposed legislation is to reimburse this Reserve officer for the loss sustained by him as the result of damages to his household goods. The loss occurred while the officer was on active duty in the Army of the United States and the household goods were bailed to an agent of the United States incident to transportation in connection with orders releasing Captain Boyer from active duty.

Records of the Department of the Army show that John L. Boyer, Jr., was born at Maumee, Ohio, on August 14, 1921; that after commencing active duty as an enlisted man in the United States Navy on October 7, 1942, he attended the University of Southern California, Los Angeles, Calif., and the School of Medicine, Western Reserve University, Cleveland, Ohio, under the V–12 program; that he was married on February 24, 1945, released from active duty in the Navy on February 4, 1946, and appointed an ensign in the United States Naval Reserve on July 10, 1946; that he received a degree of doctor of medicine from the School of Medicine, Western Reserve University, Cleveland, Ohio, in June of 1949; that after receiving an honorable discharge from the United States Naval Reserve, he was selected for participation in the Army civilian intern program and appointed a first lieutenant, Medical Corps, Army of the United States, on May 26, 1950; and that he commenced active duty in the Army in that grade on June 22, 1950. and, after serving a 1-year period of internship at the University Hospital of Cleveland, Ohio, he remained on active duty, receiving a temporary promotion in the grade of captain, Army of the United States, on July 13, 1951.

On May 19, 1953, while Captain Boyer was stationed at Fort Bliss, Tex., he received orders directing him to proceed to his home of record in San Diego, Calif., on June 28, 1953, and releasing him from active duty effective July 1, 1953. Pursuant thereto, and on orders of the transportation officer, at Fort Bliss, Tex., his household goods were stored in the warehouse of the Buckner Transfer & Storage Co., located at 2301 Mills Street, El Paso, Tex., on May 26, 1953. During the night of June 3, 1953, a fire broke out in this warehouse result-

ing in extensive damage to and destruction of various property stored therein, including the household goods belonging to Captain Boyer.

Captain Boyer subsequently was released from active duty and, on September 21, 1954, he filed a claim with the Department of the Army under the provisions of the Military Personnel Claims Act of 1945 (59 Stat. 225; 31 U. S. C. 222c), as amended, for reimbursement of his loss in the amount of $4,075.83. The claim was processed within the Department of the Army under regulations prescribed by the Secretary of the Army in accordance with the Military Personnel Claims Act of 1945, supra. After giving effect to depreciation of the items involved in the claim, it was determined by this Department that the claim was meritorious in the amount of $2,996.89. However, the act of July 3, 1952 (Public Law 439, 82d Cong.; 66 Stat. 322), placed a maximum limitation of $2,500 on the amount which could be paid administratively under the provisions of the Military Personnel Claims Act of 1945, which was the only statute under which the claim could be considered. Accordingly, Captain Boyer's claim has been allowed administratively in the amount of $2,500, and a check in that amount has been sent to him. After the making of said payment there remains a balance of damages sustained by the claimant in the sum of $496.89 for which he has not been compensated. There is no method by which he may be reimbursed for the remaining portion of this loss except through the enactment by the Congress of private legislation.

All of the household goods, for the damage to which this claim has been determined to be meritorious, were reasonable, useful, necessary, or proper for the claimant to have owned and had in his possession under the attendant circumstances. The loss occurred incident to the service while the household goods were bailed to an agent of the United States and without any fault or neglect on the part of Captain Boyer.

On May 26, 1953, when Captain Boyer's household goods were delivered to the warehouse of the Buckner Transfer & Storage Co. in El Paso, Tex., that company, representing United Van Lines, Inc., issued to him a document which apparently insured against all risks of physical loss or damage to the property while it was stored and in transit to San Diego, Calif. However, after the loss was incurred, all liability therefor was denied completely by the Buckner Co., both on the theory of lack of negligence and under the purported insurance. Paragraph 13, Army Regulations 25–100, dated August 20, 1953, implementing the Military Personnel Claims Act of 1945, supra, provides as follows:

"TRANSFER OF RIGHTS AGAINST CARRIER OR INSURER.—Whenever a carrier or insurer denies liability or fails to satisfy such liability and a claim for the property in relation to which the claim is made is approved under these regulations without deduction of the amount for which the carrier or insurer is deemed liable, the claimant by the acceptance of payment of such claim under these regulations will be deemed to have assigned to the United States to the extent of his right, title, and interest in and to any claim he may have against the carrier or insurer and to have agreed that he will, upon request, execute and deliver to the United States a written assignment thereof, together with the original or a copy of the bill of lading or contract, insurance policy, and all other papers which may be required to enable the United States to press the claim against the carrier or insurer. Upon settlement of his claim by the United States, the claimant will be considered to have agreed to refund to the Government the amount of any subsequent recovery from the carrier or insurer."

Inasmuch as the Department of Justice has under consideration the possibility of instituting action against the carrier or insurer, and in order not to risk placing in jeopardy any right, title, and interest in and to any claim which the United States has a result of this fire, a proviso to that effect has been inserted in this proposed legislation.

The Congress, from time to time, has considered favorably claims of members of the Armed Forces for loss of personal property in excess of the $2,500 limitation placed upon administrative payments under the provisions of the Military Personnel Claims Act of 1945. Recent cases are Private Law 494, for the relief of Paul G. Kendall (H. R. 5025); Private Law 497, for the relief of Walter Carl Sander (H. R. 685); and Private Law 933, for the relief of S. Sgt. Frank C. Maxwell (H. R. 7835), all enacted by the 83d Congress. An additional case, S. 3515, for the relief of John B. Gibbons, Jr., was under consideration by the Committee on the Judiciary, United States Senate, at the close of the 2d session of the 83d Congress, but it was not acted upon.

The total cost of this bill, if enacted, will be $496.89.

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The Bureau of the Budget advises that there is no objection to the submission of the proposed legislation for the consideration of the Congress.

Sincerely yours,

ROBERT T. STEVENS,
*Secretary of the Army.*

A BILL For the relief of John L. Boyer, Junior

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to John L. Boyer, Junior, 5454 Mary Lane Drive, San Diego, California, the sum of $496.89, in full settlement of all claims against the United States for the loss sustained by him as a result of damage to and destruction of his personal property in a fire that occurred in the warehouse of the Buckner Transfer and Storage Company, 2301 Mills Street, El Paso, Texas, on June 3, 1954: *Provided,* That nothing in this Act does or shall affect the right, title and interest in and to any claim which the Government of the United States has as a result of this fire: *Provided further,* That no part of the amount appropriated in this Act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with such claim, any contract to the contrary notwithstanding. Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

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Calendar No. 1921

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1901

# SAMUEL E. ARROYO

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 5951]

The Committee on the Judiciary, to which was referred the bill (H. R. 5951) for the relief of Samuel E. Arroyo, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE

The purpose of the proposed legislation is to authorize and direct the Secretary of the Treasury to pay the sum of $1,411.84 to Samuel E. Arroyo, of Corpus Christi, Tex., in full settlement of his claim against the United States for destruction of his household goods by fire while in Government storage at the port of Whittier, Alaska.

### STATEMENT

This proposed legislation was submitted by the Department of the Army to the Speaker of the House of Representatives.

Records of the Department of the Army disclose that in March 1953, Lieutenant Arroyo, then stationed at Anchorage, Alaska, received orders to proceed to the Alaska Communications System Headquarters in Seattle, Wash. His household goods were packed and crated shortly thereafter and his household effects were transported to the port of Whittier, Alaska, for further shipment to the United States via ocean transportation. While the goods were in a Government warehouse at Whittier, a serious fire broke out in that port which resulted in the total destruction of Lieutenant Arroyo's household effects.

Lieutenant Arroyo was subsequently released from active duty and submitted a claim under the Military Personnel Claims Act of 1945,

as amended, for reimbursement in the amount of $6,192.73. The claim was processed within the Department of the Army under regulations prescribed by the Secretary of the Army in accordance with the Military Personnel Claims Act of 1945. After giving effect to depreciation of the items involved in the claim, it was determined by the Department of the Army that the claim was meritorious in the amount of $3,911.84. However, Public Law 439, 82d Congress, dated July 3, 1952 (66 Stat. 321), placed a maximum limitation of $2,500 on the amount which could be administratively paid under the provisions of the Military Personnel Claims Act of 1945, which was the only statute under which the claim could be considered. Accordingly, the claim of Lieutenant Arroyo has been administratively allowed in the maximum amount of $2,500. He has not been compensated for the remaining portion of his loss, which has been determined by the Department of the Army to be $1,411.84. There is no way in which Lieutenant Arroyo can be compensated for this remaining portion of his loss other than through the enactment of special legislation for his relief.

The Congress, from time to time, has favorably considered claims of members of the Armed Forces for loss of personal property in excess of the $2,500 limitation placed upon administrative payments under the Military Personnel Claims Act of 1945. Recent cases are Private Law 494, for the relief of Paul G. Kendall; Private Law 497, for the relief of Walter Carl Sander; and Private Law 933, for the relief of S. Sgt. Frank C. Maxwell, all enacted by the 83d Congress.

The committee is in accord with the recommendation of the Department of the Army that this claim be favorably considered. The loss to the claimant occurred incident to his service in the Armed Forces, while his household effects were bailed to the United States and without any fault or neglect on his part. The committee, therefore, recommends favorable consideration of this bill, H. R. 5951.

Attached hereto and made a part hereof is the report submitted by the Department of the Army in connection with this claim.

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DEPARTMENT OF THE ARMY,
OFFICE OF THE SECRETARY,
*Washington, D. C., April 26, 1955.*

Hon. SAM RAYBURN,
*Speaker of the House of Representatives.*

DEAR MR. SPEAKER: There is enclosed herewith a draft of a bill for the relief of Samuel E. Arroyo. The submission of this proposed legislation is in accordance with procedures approved by the Secretary of Defense.

The purpose of this proposed bill is to reimburse this Reserve officer for the complete destruction of his household goods. The loss occurred while the officer was on active duty with the Army of the United States and while the household goods were bailed to the United States incident to transportation in connection with a permanent change of station of Lieutenant Arroyo.

In March 1953, Lieutenant Arroyo, then stationed at Anchorage, Alaska, received orders to proceed to the Alaska Communications System Headquarters in Seattle, Wash. His household goods were packed and crated shortly thereafter and his household effects were transported to the port of Whittier, Alaska, for further shipment to the United States via ocean transportation. While the goods were in a Government warehouse at Whittier, a serious fire broke out in that port which resulted in the total destruction of Lieutenant Arroyo's household effects.

Lieutenant Arroyo was subsequently released from active duty and submitted a claim under the provisions of the Military Personnel Claims Act of 1945, as

amended (31 U. S. C. 222c), for reimbursement in the amount of $6,192.73. The claim was processed within the Department of the Army under regulations prescribed by the Secretary of the Army in accordance with the Military Personnel Claims Act of 1945, supra. After giving effect to depreciation of the items involved in the claim, it was determined in this Department that the claim was meritorious in the amount of $3,911.84. However, Public Law 439, 82d Congress, dated July 3, 1952 (66 Stat. 321), placed a maximum limitation of $2,500 on the amount which could be administratively paid under the provisions of the Military Personnel Claims Act of 1945, supra, which was the only statute under which the claim could be considered. Accordingly, Lieutenant Arroyo's claim has been administratively allowed in the maximum amount of $2,500. He has not been compensated for the remaining portion of his loss which has been determined by this Department to be $1,411.84. There is no way in which Lieutenant Arroyo can be compensated for this remaining portion of his loss other than through the enactment of special legislation for his relief. The loss occurred incident to his service, while his household effects were bailed to the United States and without any fault or neglect on his part.

The Congress, from time to time, has favorably considered claims of members of the Armed Forces for loss of personal property in excess of the $2,500 limitation placed upon administrative payments under the Military Personnel Claims Act of 1945, supra. Recent cases are Private Law 494, for the relief of Paul G. Kendall (H. R. 5025); Private Law 497, for the relief of Walter Carl Sander (H. R. 685); and Private Law 933, for the relief of S. Sgt. Frank C. Maxwell (H. R. 7835), all enacted by the 83d Congress. An additional case, S. 3515, for the relief of John B. Gibbons, Jr., was under consideration by the Committee on the Judiciary, United States Senate, at the close of the 2d session of the 83d Congress but was not acted upon.

The total cost of this bill, if enacted, will be $1,411.84.

The Bureau of the Budget advises that there is no objection to the submission of the proposed legislation for the consideration of the Congress.

Sincerely yours,

ROBERT T. STEVENS,
*Secretary of the Army.*

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Calendar No. 1922

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1902

# RELIEF OF CERTAIN RURAL CARRIERS

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 6622]

The Committee on the Judiciary, to which was referred the bill (H. R. 6622) for the relief of certain rural carriers, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE

The purpose of the proposed legislation is to relieve certain rural carriers who served heavily patronized routes from liability to refund to the United States certain payments erroneously made by the Post Office Department during the period from November 1, 1949, through February 16, 1955.

### STATEMENT

This proposed legislation was introduced at the request of the Postmaster General.

As pointed out by the Postmaster General in his letter submitting this proposal to the Speaker of the House of Representatives, section 17 (d) of the act of July 6, 1945 (59 Stat. 455), provided that a rural carrier serving a heavily patronized route not in excess of 45 miles in length could be paid a heavy duty allowance, in addition to his regular compensation, so long as the total of the regular compensation and heavy-duty allowance did not exceed $3,000. By various amendments over the years, the $3,000 amount has been raised to $4,370. The letter from the Postmaster General states, in part, as follows:

> The three meritorious grades provided in the act of July 6, 1945, were struck from the act by the Postal Employees Longevity Act of May 3, 1950 (64 Stat. 101), which made provision for longevity grades A, B, and C, based on years of

service. Section 5 of that act provided, however, that "None of the provisions of this Act shall be construed as to reduce the grade or compensation of any employee on the rolls on the date of the enactment of this Act."

This Department computed the heavy-duty allowance for the rural carriers on heavily patronized routes on the basic salary exclusive of longevity pay. Inclusion of longevity pay in the computation would have necessitated a reduction in compensation to bring the heavy duty allowance, regular compensation, and longevity payments within the limitation of section 17 (d) of the act of July 6, 1945.

Subsequent to the time these payments were made, the Comptroller General concluded, in certain decisions, that the Post Office Department had been overpaying the carriers on the heavily patronized routes since November 1, 1949, in that longevity pay should have been combined in the computations. He further held that collections must be made from the carriers to recover the overpayments.

Inasmuch as between 2,000 and 3,000 carriers are involved in these overpayments and, further, inasmuch as many of the carriers who were overpaid have been separated because of death, resignation, retirement, or removal for other reasons, the committee is of the opinion that the collection of such overpayments would result in untold hardships to the carriers involved as well as to their families. It is not known what the total amount of the overpayments was, however, it is estimated that the amount is not in excess of $300,000.

In view of the fact that the alleged overpayments were made in good faith, as a result of the application of the laws by the Post Office Department, and, further, that the overpayments were received as salaries by the employees in good faith, the committee believes that it would be inequitable to now require them to refund the amounts of such overpayments. After consideration of all the facts and circumstances submitted in connection with this matter, the committee is of the opinion that this legislation is meritorious and, therefore, recommends that the bill, H. R. 6622, be considered favorably.

Attached hereto and made a part hereof is the letter from the Postmaster General to the Speaker of the House of Representatives, dated May 26, 1955, hereinbefore referred to, requesting enactment of this legislation.

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OFFICE OF THE POSTMASTER GENERAL,
*Washington 25, D. C., May 26, 1955.*

Hon. SAM RAYBURN,
*Speaker of the House of Representatives.*

DEAR MR. SPEAKER: There is transmitted herewith, for consideration by the Congress, proposed legislation for the relief of certain rural carriers.

As a result of the application by this Department of the savings provisions in section 5 of the so-called Postal Employees Longevity Act of May 3, 1950 (64 Stat. 101), to the rural carriers serving heavily patronized routes, a large number of such rural carriers have been paid more than allowed under the limitation imposed by section 17 (d) of the act of July 6, 1945, as amended (sec. 867 (d) of title 39, U. S. C.). The enactment of this legislative proposal is necessary to relieve the carriers, many of whom are retired or deceased, from liability of making refund of the excess compensation paid them, through no fault on their part, during the period from November 1, 1949, through February 16, 1955.

As originally enacted, section 17 (d) of the act of July 6, 1945 (59 Stat. 455), provided that a rural carrier serving a heavily patronized route not in excess of 45 miles in length could be paid a heavy-duty allowance, in addition to his regular compensation, provided that the total of the regular compensation and heavy-duty allowance did not exceed $3,000. This limitation also applied to rural carriers on heavily patronized routes who had not reached their highest salary grade. Through amendments over the years, the $3,000 amount has been raised to $4,370.

The three meritorious grades provided in the act of July 6, 1945, were struck from the act by the Postal Employees Longevity Act of May 3, 1950 (64 Stat. 101), which made provision for longevity grades A, B, and C, based on years of service. Section 5 of that act provided, however, that "None of the provisions of this Act shall be construed as to reduce the grade or compensation of any employee on the rolls on the date of the enactment of this Act."

This Department computed the heavy-duty allowance for the rural carriers on heavily patronized routes on the basic salary exclusive of longevity pay. Inclusion of longevity pay in the computation would have necessitated a reduction in compensation to bring the heavy-duty allowance, regular compensation, and longevity payments within the limitation of section 17 (d) of the act of July 6, 1945.

This matter was considered by the Comptroller General in his decisions B–116833 of November 3, 1953, B–118545 of March 29, 1954, B–118545 of December 3, 1954, and B–116833 of February 1, 1955. He has concluded that this Department has been overpaying the carriers on the heavily patronized routes since November 1, 1949, in that longevity pay should have been combined in the computation. He also held that collections must be made from the carriers to recover the overpayments. The Comptroller General stated, however, that collections from the carriers may be held in abeyance pending action by Congress on this legislative proposal.

Adjustments have been made in the rural carriers' compensation since January 1, 1954, based on the decisions of the Comptroller General as received in the Department. Final adjustment of all such carriers' compensation has been made effective February 16, 1955. From that date on, the compensation and heavy-duty allowance of all carriers on the heavily patronized routes will be cut back to conform to the limitation in section 16 (d) of the act of July 6, 1945, as amended, It is impracticable, however, to make the readjustments retroactive to November 1, 1949, as directed by the Comptroller General. Many of the carriers who have been overpaid subsequent to that date have been separated because of death, resignation, retirement, or removal for other reasons. Such readjustment also would seem inequitable in view of the fact that the employees who were allegedly overpaid received the salaries in good faith.

From the information presently before this Department there could be between 2,000 and 3,000 carriers involved. It is not known what is the total amount of the overpayments. It is estimated, however, that the amount will not be in excess of $300,000.

In view of the fact that the alleged overpayments were made, in good faith, as a result of the application of the laws by the Post Office Department, and in view of the further fact that the collection of such overpayments back to the date of November 1, 1949, would, in many cases, result in untold hardship to the carriers involved, as well as to their families, it is the recommendation of this Department that the carriers be relieved of making any refund of such overpayments.

It is believed that the legislation submitted herewith will accomplish the purpose desired, and its early enactment is urged.

The Bureau of the Budget has advised that there would be no objection to the submission of this legislative proposal to Congress.

Sincerely yours,

CHARLES R. HOOK, Jr.,
*Acting Postmaster General.*

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Calendar No. 1923

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1903

# GAY STREET CORP., BALTIMORE, MD.

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 6706]

The Committee on the Judiciary, to which was referred the bill (H. R. 6706) for the relief of Gay Street Corp., Baltimore, Md., having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE

The purpose of the proposed legislation is to pay the Gay Street Corp., of Baltimore, Md., the sum of $3,145.94 in full settlement of all claims against the United States with respect to a lease entered into on October 1, 1946, by the Gay Street Corp. with the War Assets Administration.

### STATEMENT

The Gay Street Corp. is the owner of a six-story office building located at 112–114 South Gay Street, Baltimore, Md. In the summer of 1946 the War Assets Administration leased the building for 21 months from October 1, 1946, to June 30, 1948, at a monthly rental of $3,750 provided the Gay Street Corp., at its own expense, would make a number of alterations to the building prior to the commencement of the lease. These alterations cost $5,505.38 and were made so as to make the premises suitable to the needs and desires of the War Assets Administration.

The War Assets Administration gave notice by a letter dated May 14, 1947, that it would vacate the building on June 30, 1947, because a consolidation of its activities made the building in excess of its office-

space requirements. In the letter the War Assets Administration noted that in view of the fact that the United States operates on a fiscal-year basis and the further fact that the funds of the United States cannot be obligated for a period extending beyond each fiscal year, it was giving notice of the termination to be effective on June 30, 1947. The agent of the Gay Street Corp. protested this action and the subsequent vacation of the premises by the War Assets Administration. Demands for further rent payment in accordance with the lease were rejected.

The claim of the Gay Street Corp. was referred to the Court of Claims by the House of Representatives with directions to proceed in accordance with sections 1492 and 2509 of title 28 of the United States Code. That court found that the Gay Street Corp. did not have a legal or equitable claim for the loss of rent because of the Government's vacating the premises prior to the termination of the lease. However, the court did find that from a moral standpoint the Gay Street Corp. was entitled to be paid $3,145.94 to recoup its losses in connection with the alterations and improvements made by the corporation as necessary for the Government's occupancy. The committee concurs with the opinion of the court and recommends the favorable consideration of the bill.

A full discussion of the facts and circumstances of this case together with the legal points involved are set out in the opinion of the Court of Claims which is as follows:

IN THE UNITED STATES COURT OF CLAIMS

Congressional No. 3-52 (Decided January 11, 1955)

*Gay Street Corporation of Baltimore, Maryland*, v. *The United States*

*Mr. Frank Kaufman* for the plaintiff. *Mr. Marx Leva, Messrs. Frank & Oppenheimer*, and *Messrs. Fowler, Leva, Hawes & Symington* were on the briefs. *Mr. Herbert Pittle*, with whom was *Mr. Assistant Attorney General Perry W. Morton*, for the defendant.

OPINION

LARAMORE, *Judge*, delivered the opinion of the court:

This is a congressional reference case referred to the Court of Claims by House Resolution 566, 82d Congress, 2d session, with instructions to proceed in accordance with sections 1492 and 2509 of Title 28 of the United States Code.

Pursuant to the aforementioned reference the plaintiff has filed its petition in this court seeking to recover damages for failure by the defendant to perform its obligation under a lease of an office building.

Plaintiff is a corporation organized and existing under the laws of the State of Maryland. It is the owner of a six-story building located at 112-114 South Gay Street, Baltimore, Maryland. This building was purchased by the plaintiff in July 1946. It had been used as an office building for many years by its previous owners.

In the summer of 1946, the War Assets Administration, an agency of the United States Government, negotiated with plaintiff for a lease of the building for a period of 21 months beginning October 1, 1946, to June 30, 1948, inclusive, at a monthly rental of $3,750, provided that plaintiff, prior to execution and commencement of the lease, would make a number of specific alterations to the building, at plaintiff's sole cost and expense, so that the premises would be suitable to the needs and desires of the War Assets Administration. Plaintiff made the requested alterations at a cost of $5,505.38. That sum represented the "fair and reasonable cost" of making such alterations.

On October 1, 1946, plaintiff, acting through Henry L. Frank & Company, Inc., a Maryland corporation, its agent, and the defendant, executed a lease containing the foregoing provisions. Pursuant to paragraph 3 of the lease, defendant had the right to occupy the premises to and including June 30, 1951. Pursuant to paragraph 12 of the lease, defendant had the right to terminate the

lease on June 30, 1948, or at the end of any fiscal year thereafter by giving plaintiff at least 120 days' prior written notice. The lease did not contain any express provision for termination before June 30, 1948.

By letter of May 14, 1947, the War Assets Administration notified Henry L. Frank & Company, Inc., that it would vacate the building in question on June 30, 1947, because consolidation of its activities made the building in excess of its office space requirements. By letter dated June 2, 1947, the War Assets Administration again notified Henry L. Frank & Company, Inc., that it would quit the premises on June 30, 1947. In that letter the War Assets Administration pointed out that in view of the fact that the United States Government operates on a fiscal year basis and the further fact that funds of the United States Government cannot be obligated for a period extending beyond each fiscal year, the War Assets Administration was serving its notice of termination to be effective on June 30, 1947. No appropriation was available for continuing the lease beyond June 30, 1947.

On June 12, 1947, Henry L. Frank & Company, Inc., notified the War Assets Administration that under the terms of paragraph 12 of the lease the Government had no right to terminate the lease prior to June 30, 1948.

On June 30, 1947, the War Assets Administration vacated the premises and the plaintiff protested this action.

On July 3, 1947, the War Assets Administration acknowledged receipt of the aforementioned letter of June 12, 1947, from Henry L. Frank & Company, Inc. In that letter the War Assets Administration stated, in part:

> The action of this office in surrendering this lease was based on the provisions of Sections 3732 and 3679 of the Revised Statutes and the holdings of the court in the cases of *Smoot* v. *U. S.*, 38 Ct. Cl. 418; *Leiter, et al., Trustees* v. *U. S.*, 271 U. S. 204; and *Goodyear Rubber Company* v. *U. S.*, 276 U. S. 287.

By letter of July 26, 1947, Henry L. Frank & Company, Inc., made demand upon War Assets Administration for payment of rent in accordance with the terms of the lease. This demand was rejected by the War Assets Administration by a letter addressed to Henry L. Frank & Company, Inc., dated July 28, 1947.

After the War Assets Administration vacated the premises on June 30, 1947, Henry L. Frank & Company, Inc., as agent for plaintiff, made efforts to mitigate the damages suffered by the plaintiff as a result of the loss of rental income for the year July 1, 1947, to June 30, 1948, inclusive. In the first nine months after the premises were so vacated, plaintiff caused more than 20 separate advertisements to be inserted in local newspapers in Baltimore, Maryland, in an effort to rent or sell the premises. In addition, Henry L. Frank & Company, Inc., acting on behalf of the plaintiff, advised other real-estate agents in Baltimore of the availability of the property for rental or purchase, and showed and discussed the premises to and with all interested parties including principals and real-estate agents. Despite these efforts, neither plaintiff nor its agent received any offer to rent or purchase the premises until 1950. As a result, the premises were vacant during the year July 1, 1947, to June 30, 1948, inclusive.

If defendant had not vacated the premises, and had paid rent as required by the terms of the lease, plaintiff would have received rental income for the period July 1, 1947, to June 30, 1948, in the amount of $45,000. However, since plaintiff would have incurred expenses for operating the building in accordance with the terms of the lease during said period, its net rental income would have been $45,000 less the amount of its operating expenses. The fair and reasonable estimated cost of such operations for the period July 1, 1947, to June 30, 1948, inclusive, is $12,479.43.

After the claim was referred to this court by the House of Representatives, the plaintiff filed its petition in which it alleged the facts substantially as outlined above and requested that the court enter judgment in its favor for $35,666.50 and interest, or make a report to Congress "confirming" the legal and/or moral basis of its claim against the United States in the amount of $35,666.50, and interest. In its brief the plaintiff requests "net damages" of $32,520.57.

The answer filed by the Government admits generally the factual allegations regarding the contract and subsequent transactions, but denies that the plaintiff is entitled to judgment and further denies that the plaintiff is entitled to a report to Congress confirming its claim against the United States.

The questions presented are: (1) whether the United States was obligated for a term extending beyond the fiscal year in which the lease was executed, in the absence of express congressional authorization and in the absence of an available

appropriation; (2) if the United States was not legally obligated for the entire term, does the plaintiff have an equitable claim against the United States for the action of its officers in negotiating and executing a contract which was beyond the scope of their authority; and (3) if the plaintiff has a claim, either legal or equitable, is it entitled to interest.

When the lease was executed the War Assets Administration was an administrative branch of the Executive Department (Act of October 3, 1944, 58 Stat. 765). *United States* v. *Shofner Iron & Steel Works*, 168 F. 2d 286. Congress did not authorize it to make leases for a period of more than one year. Therefore, when the lease was executed, the officer of the War Assets Administration who executed it on behalf of the United States did not have any authority to obligate the credit of the United States for a period of time in excess of the then fiscal year, which ended June 30, 1947. This fact is not disputed and is admitted by plaintiff in paragraph 15 of its petition wherein it is alleged:

> It is true that Sections 3679 and 3732 of the Revised Statutes of the United States provide that no agency of the United States Government may obligate itself beyond a current fiscal year without specific congressional authorization. *Leiter, et al., Trustees* v. *U. S.*, 271 U. S. 204, 70 L. E. 906 (1926); *Goodyear Rubber Company* v. *U. S.*, 76 U. S. 287, 72 L. E. 575 (1928); and *Smoot* v. *U. S.*, 38 Ct Cls. 408 (1903), all hold that there is no basis for prosecuting in the Court of Claims a claim which has arisen by virtue of an "ultra vires" act committed by a Government agency. Therefore, it would appear that plaintiff has no remedy open to it in any court of law or in equity which will enable it to recover its damages or any part thereof

The facts further show that no appropriation was available for continuing the lease for the year following. This court and the Supreme Court in construing sections 3679 and 3732 of the revised statutes have consistently held that a lease for more than the fiscal year for which an appropriation may be available is prohibited, *Smoot* v. *United States*, 38 C. Cls. 418, and that a lease for a term of years when entered into under an appropriation available for but one fiscal year is binding on the Government only for that year. *Leiter, et al., Trustees* v. *United States*, 271 U. S. 204; *Goodyear Tire & Rubber Company* v. *United States*, 276 U. S. 287.

Thus, the United States was not legally obligated under this lease for a period beyond June 30, 1947.

It can be reasonably concluded that the present claim is one arising from a breach of an express contract and, therefore, would be within the jurisdiction of this court. This being a congressional reference case, the procedure provided for in 28 U. S. C. *k* 1492 and *k* 2509 provides that this court may either enter a judgment for an amount of the claim or report the matter back to Congress with its findings of fact, conclusions of law and recommendations. As noted above, the courts have consistently held that the United States is not legally obligated by the unauthorized action of its agent in executing leases. Thus the plaintiff is not entitled to a judgment as a matter of law since it has no legal claim against the Government.

The next question we are confronted with is whether or not the plaintiff has an equitable claim against the United States.

The defendant says plaintiff does not have an equitable claim against the United States even within the meaning of that term as used in the congressional reference. We are inclined to agree with the defendant insofar as the plaintiff's equitable right to the rentals after the building was vacated by the War Assets Administration.

Negotiations for the lease were conducted on behalf of the United States by employees of the War Assets Administration and on behalf of the plaintiff by Henry L. Frank and Company, Inc.

The lease was executed on behalf of the plaintiff by the said Henry L. Frank and Company, Inc.

Considering that the agent for plaintiff was a professional real estate company, it is obvious that plaintiff was represented by experienced business men. It is clearly not an instance where the Government officers were dealing with inexperienced persons against whom knowledge of the legal limitations upon Government officers should not be implied. It cannot be said, therefore, that Government agents took advantage of the plaintiff by not affirmatively disclosing the limitations on their own authority, about which they themselves were apparently unaware.

The courts have consistently held that anyone entering into an agreement with the Government takes the risk of having accurately ascertained that he who

purports to act for the Government stays within the bounds of his authority. "And this is so even though * * * the agent himself may have been unaware of the limitations upon his authority." *Federal Crop Insurance Corp.* v. *Merrill*, 332 U. S. 380, 384; *Whiteside* v. *United States*, 93 U. S. 247, 257; *United States* v. *Holley*, 199 F. 2d 575; *Reconstruction Finance Corp.* v. *Martin Dennis Co.*, 195 F. 2d 698.

In *United States* v. *Willis*, 164 F. 2d 453, the Circuit Court of Appeals held that one who deals with an agent of the Government must look to his authority, which will not be presumed but must be established, and one who deals with such an agent cannot rely upon the scope of dealing or upon the apparent authority of such an agent.

This court held in *Jacob Reed's Sons, Inc.* v. *United States*, 60 C. Cls. 97, affirmed, 273 U. S. 200, and *A. L. Ferguson* v. *United States*, 60 C. Cls. 649, affirmed, 273 U. S. 660, that one dealing with the United States is bound to know and take notice of the limited authority of an officer with whom he was dealing and the court will not imply that such an officer was acting under proper authority.

The United States received no benefit from the premises for the period of time after the premises were vacated. We agree with the defendant's statement that "it is simply an instance where the uninformed Government agents unintentionally violated statutes enacted by Congress for the protection of the United States and where plaintiff, acting through an apparently competent representative, did not exercise diligence in ascertaining the scope of authority of the Government representatives to the extent required not only by the decisions of the courts, but by ordinary business practice." Furthermore, the record does not disclose that plaintiff could otherwise have rented the property. In other words, plaintiff has not shown that it lost another tenant by reason of the Government's occupancy under the present lease. By the same token, if the Government occupied the building beyond the then fiscal year and then refused to pay rent because of the unauthorized act of its agent in executing the lease, our answer would be a recommendation that Congress pay for the occupancy because the Government received the benefit thereof. This we believe would be quity in its broadest and most general signification as used in the congressional reference.

Therefore, even though the term "equitable claim" as used in the congressional reference, is not used in a strict technical sense, the plaintiff does not have a claim even under the broader moral sense based upon general equitable considerations insofar as the claim for loss of rent.

However, we believe the claim for requested alterations presents a somewhat different question.

In this connection the Government negotiated for a lease for a minimum term of 21 months, provided the plaintiff would make certain alterations and improvements to the building. The plaintiff made such improvements and alterations at a cost of over $5,500. At the end of nine months the Government vacated the premises and ceased paying rent. It is reasonable to assume that plaintiff would not have expended this amount or made any alterations or improvements except for the opportunity to recoup said sum in the 21 months' rental that would follow. It is also reasonable to conclude that the alterations and improvements were necessary to the Government's occupancy and had they not been made by plaintiff, the expense of such would have fallen on the Government. It would then follow that the expenditure of over $5,500 by the plaintiff constituted an unjust enrichment on the part of the Government, for which plaintiff should recover.

Plaintiff was unable to recoup said expenditure except insofar as it would be apportioned over the nine months of the Government's occupancy. This would mean that plaintiff was not able to recoup $3,145.94 of his original expenditure and the Government was enriched to that extent. While this is not a claim upon which this court could render judgment, we believe the plaintiff is morally entitled to this amount. The Government reaped the benefit of the expenditure and in good conscience ought to place the plaintiff in approximately the same position as it was prior to the execution of the lease.

The next question is whether or not plaintiff is entitled to interest.

It is well established that in the absence of a statute or contract provision to the contrary, interest is not allowable on claims against the United States for breach of contract. *United States* v. *Thayer-West Point Hotel Co.*, 329 U. S. 585; *United States* v. *N. Y. Rayon Importing Co., Inc.*, 329 U. S. 654.

In the light of the above authority it is clear that this court in the present case would have no jurisdiction to award interest even if the plaintiff had a legal claim based upon the contract. It would naturally follow that plaintiff would not be entitled to interest on a claim which is not a legal obligation, and which, if it were, would not entitle it to interest.

CONCLUSION

Plaintiff does not have a claim either legal or equitable for loss of rent because of the Government's vacating the premises prior to termination of the lease.

Plaintiff does not have a claim upon which this court could render judgment for alterations and improvements, but is morally[1] entitled to be paid $3,145.94 upon such claim. We recommend that Congress, in their discretion, pay this amount to plaintiff.

Plaintiff is not entitled to recover interest.

This opinion and the findings of fact, together with the conclusions thereon, will be certified to Congress pursuant to House Resolution 566, 82d Congress, 2d Session.

MADDEN, *Judge*; WHITAKER, *Judge*; LITTLETON, *Judge*; and JONES, *Chief Judge*, concur.

FINDINGS OF FACT

The court, having considered the evidence, the report of Commissioner Marion T. Bennett, and the briefs and argument of counsel, makes findings of fact as follows:

1. The plaintiff is a corporation organized and existing under the laws of the State of Maryland and is the owner of a six-story building, located at 112-114 South Gay Street, Baltimore, Maryland.

2. The aforesaid building was purchased by the plaintiff on July 22, 1946. It had been used as an office building for many years by its previous owners.

3. In the summer of 1946, the War Assets Administration, an agency of the United States, negotiated with the plaintiff for the occupancy of the premises for a period of 21 months, beginning October 1, 1946, at a monthly rental of $3,750 provided that the plaintiff would make a number of specific alterations to the building prior to the commencement of the lease and as a result of such alterations make the premises suitable to the needs of the War Assets Administration. The plaintiff did make the requested alterations at a cost of $5,505.38. That sum represented the fair and reasonable cost of making the requested alterations.

4. On October 1, 1946, the plaintiff, acting through Henry L. Frank and Company, Inc., its agent, and the defendant executed a lease under which the plaintiff leased the premises to the defendant for a term of 21 months beginning October 1, 1946, and ending June 30, 1948, at a rental of $3,750 per month. Paragraph 12 of the lease was as follows:

> 12. The Government may terminate this lease on June 30, 1948, or at the end of any fiscal year thereafter by giving the Lessor at least one hundred twenty (120) days prior written notice.

5. By letter dated May 14, 1947, the War Assets Administration notified Henry L. Frank and Company, Inc., that it would vacate the building in question on June 30, 1947, because a consolidation of its activities made the building in excess of its office-space requirements.

6. By letter dated June 2, 1947, the War Assets Administration again notified Henry L. Frank and Company, Inc., that it would quit the premises on June 30, 1947. This letter stated in part:

> In view of the fact that the Government operates on the basis of a fiscal year, which year terminates on June 30th of such year, and in view of the further fact that Government funds cannot be obligated for a period extending beyond such fiscal year, notice is hereby given that War Assets Administration will quit, relinquish and give us said premises on June 30th, 1947.

7. No appropriation was available for continuing the lease beyond June 30, 1947.

8. Henry L. Frank and Company, Inc., notified the War Assets Administration on June 12, 1947, that under the terms of paragraph 12 of the lease the Government had no right to terminate the lease prior to June 30, 1948.

9. The War Assets Administration vacated the premises on June 30, 1947, and the plaintiff protested this action.

[1] We believe the term "gratuity" as used in the congressional reference statute is synonymous with the term "equity" as used in its moral sense. In its broader and most general signification, equity denotes the spirit and habit of fairness, justness, and right dealing which would regulate the intercourse of men with men—the rule of doing to all others as we desire them to do to us; or as it is expressed by Justinian—"to live honestly, to harm nobody, to render to every man his due." It is therefore the synonym of natural right or justice. But in this sense its obligation is ethical rathern than jural, and its discussion belongs to the sphere or morals. It is grounded in the precepts of the conscience, not in any sanction of positive law.

10. On July 3, 1947, the War Assets Administration acknowledged receipt of the letter of June 12, 1947, from Henry L. Frank and Company, Inc., stating in part:

> The action of this office in surrendering this lease was based on the provisions of Sections 3732 and 3679 of the Revised Statutes and the holdings of the court in the cases of *Smoot* v. *U. S.*, 38 Ct. Cl. 418; *Leiter, et al., Trustees* v. *U. S.*, 271 U. S. 204, and *Goodyear Rubber Company* v. *U. S.*, 276 Fed. 287.

11. By letter dated July 26, 1947, Henry L. Frank and Company, Inc., made demand upon the War Assets Administration for payment of rent in accordance with the terms of the lease. That demand was rejected by the War Assets Administration on July 28, 1947.

12. Henry L. Frank and Company, Inc., as agent for the plaintiff, made concerted and reasonable efforts to mitigate the damages suffered by the plaintiff as a result of the loss of rental income for the year July 1, 1947, to June 30, 1948, inclusive. These efforts included the placement of numerous newspaper advertisements offering the premises for rental or for sale, advising other real-estate agents in Baltimore of the availability of the property for rental or purchase, and showing and discussing the premises to and with all interested parties. Despite these efforts neither the plaintiff nor its agent received any offer to rent or purchase the premises until 1950.

13. If the defendant had not vacated the premises on June 30, 1947, but had remained until the expiration date stated in the lease, the plaintiff would have received rental at the lease rate of $45,000 for the period July 1, 1947, to June 30, 1948. However, the plaintiff would have incurred expenses for operation of the building and the fair and reasonable cost of such operation for the same period July 1, 1947, to June 30, 1948, would have been $12,479.43.

14. On May 24, 1949, a private bill, H. R. 4851, 81st Cong., 1st sess., was introduced for the relief of the plaintiff and to authorize payment by the Treasury to the plaintiff of the sum of $35,666.50.

No action having been taken on H. R. 4851 during the 81st Congress, there was introduced in the 82d Congress H. R. 2779, which was referred to the Committee on the Judiciary of the House of Representatives, which issued its report, No. 1542, 82d Cong., 2d sess. Thereafter, by H. Res. 566, 82d Cong., 2d sess., the matter was referred to this court pursuant to 28 U. S. C., sections 1492 and 2509

15. Plaintiff's damages are $32,520.57, representing the difference between the annual rental of $45,000 and the estimated cost of operation during the same period of $12,479.43.

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Calendar No. 1924

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1904

# FRANK G. GERLOCK

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 7114]

The Committee on the Judiciary, to which was referred the bill (H. R. 7114) for the relief of Frank G. Gerlock, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE

The purpose of the proposed legislation is to pay to Frank G. Gerlock, of 14845 Garden Drive, Miami, Fla., the sum of $929.65, in full satisfaction of all claims against the United States for destruction of his household goods and personal effects as the result of being inundated and smashed while being transported by the Government in shipment from Trieste, Italy, to Avon Park, Fla., incident to his change of station while on active duty in the Army of the United States, such amount being in addition to the amount of $2,500 already administratively paid to him under the provisions of the Military Personnel Claims Act of 1945, as amended.

### STATEMENT

This proposed legislation was submitted to the Speaker of the House of Representatives by the Department of the Army in a letter dated June 23, 1955. The facts submitted by the Department of the Army in connection with this claim are substantially as follows:

In October 1953 the claimant in this case, Captain Gerlock, who was then stationed in Trieste, Italy, received orders to return to the United States. His household goods and personal effects were packed and crated shortly thereafter and were transported to the New York Port

of Embarkation via water transportation and thence to his home at Avon Park, Fla., via rail. The shipment, which consisted of 4 crates weighing 4,904 pounds, arrived at its destination in a mildewed, rotted, warped, and smashed condition, resulting in a total loss of the goods in question.

The claimant was subsequently released from active duty. He submitted a claim in the amount of $4,625 under the provisions of the Military Personnel Claims Act. After careful consideration and in accordance with the Military Personnel Claims Act, it was determined that the claim was meritorious in the amount of $3,429.65. However, under existing law, the Department of the Army was limited to the sum of $2,500 which could be administratively paid to the claimant. Accordingly, Captain Gerlock's claim was administratively allowed and paid in the maximum amount of $2,500. He has not been compensated for the remaining portion of his loss, which has been determined by the Department of the Army to be $929.65, so that this bill would pay to Captain Gerlock the difference between the amount permitted to be paid by the Department of the Army and that which they considered to be his maximum loss.

After consideration, the committee is of the opinion that this claim is meritorious and, therefore, recommends that the bill, H. R. 7114, be considered favorably.

Attached hereto and made a part hereof is the letter from the Department of the Army dated June 23, 1955, referred to earlier, in which it is stated that their submission of this proposed legislation is in accordance with procedures approved by the Secretary of Defense.

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DEPARTMENT OF THE ARMY,
*Washington, D. C., June 23, 1955.*

Hon. SAM RAYBURN,
*Speaker of the House of Representatives.*

DEAR MR. SPEAKER: There is enclosed herewith a draft of a bill for the relief of Frank G. Gerlock. The submission of this proposed legislation is in accordance with procedures approved by the Secretary of Defense.

The purpose of this proposed bill is to reimburse this Reserve officer for the complete destruction of his household goods and personal property. The loss occurred while the officer was on active duty with the Army of the United States and while the household goods and personal property were bailed to the United States incident to transportation in connection with a permanent change of station of Captain Gerlock.

In October 1953, Captain Gerlock, then stationed in Trieste, Italy, received orders to return to the United States. His household goods and personal effects were packed and crated shortly thereafter and were transported to the New York Port of Embarkation via water transportation and thence to his home at Avon Park, Fla. via rail. The shipment, consisting of 4 crates weighing 4,904 pounds, arrived at destination in a mildewed, rotted, warped, and smashed condition, resulting in the destruction of the goods in question.

Captain Gerlock was subsequently released from active duty and he submitted a claim under the provisions of the Military Personnel Claims Act of 1945, as amended (31 U. S. C. 222c), for reimbursement in the amount of $4,625. The claim was processed within the Department of the Army under regulations prescribed by the Secretary of the Army in accordance with the Military Personnel Claims Act of 1945, supra. After giving effect to depreciation of the items involved in the claim, it was determined in this Department that the claim was meritorious in the amount of $3,429.65. However, Public Law 439, 82d Congress, dated July

3, 1952 (66 Stat. 321), placed a maximum limitation of $2,500 on the amount which could be administratively paid under the provisions of the Military Personnel Claims Act of 1945, supra, which is the only statute under which the claim could be considered. Accordingly, Captain Gerlock's claim was administratively allowed in the maximum amount of $2,500. He has not been compensated for the remaining portion of his loss which has been determined by this Department to be $929.65. There is no way in which Captain Gerlock can be compensated for this remaining portion of his loss other than through the enactment of special legislation for his relief. The loss occurred incident to his service while his household goods and personal effects were bailed to the United States and without any fault or neglect on his part.

The Congress, from time to time, has favorably considered claims of members of the Armed Forces for loss of personal property in excess of the $2,500 limitation placed upon administrative payments under the Military Personnel Claims Act of 1945, supra. Recent cases are Private Law 494, for the relief of Paul G. Kendall (H. R. 5025); Private Law 497, for the relief of Walter Carl Sander (H. R. 685); and Private Law 933, for the relief of S. Sgt. Frank C. Maxwell (H. R. 7835), all enacted by the 83d Congress. An additional case, S. 3515, for the relief of John B. Gibbons, Jr., was under consideration by the Committee on the Judiciary, United States Senate, at the close of the 2d session of the 83d Congress, but was not acted upon.

The total cost of this bill, if enacted, will be $929.65.

The Bureau of the Budget advises that there is no objection to the submission of the proposed legislation for the consideration of the Congress.

Sincerely yours,

ROBERT T. STEVENS,
*Secretary of the Army.*

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Calendar No. 1925

84TH CONGRESS, 2d Session } SENATE { REPORT No. 1905

# EUGENE GARDNER, BYRON M. BARBEAU, JOHN R. REAVES, AND JACKSON L. HARDY

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 8306]

The Committee on the Judiciary, to which was referred the bill (H. R. 8306) for the relief of Eugene Gardner, Byron M. Barbeau, John R. Reaves, and Jackson L. Hardy, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE

The purpose of the proposed legislation is to authorize and direct the Secretary of the Treasury to pay the sum of $1,479.40 to Eugene Gardner, Xenia, Ohio; to Byron M. Barbeau, Batavia, Ohio, the sum of $463.68; to John R. Reaves, Rutherford, N. J., the sum of $4,944.39, and to Jackson L. Hardy, Seattle, Wash., the sum of $1,548.54. The payment of these amounts shall be in full settlement of all their claims against the United States for the losses sustained by them as the result of damage to and destruction of their personal property in a fire that occurred in the warehouse of the Ferguson Moving & Storage Co., in Cincinnati, Ohio, on September 10, 1952.

### STATEMENT

Records of the Department of the Army disclose that on or about June 24, 1952, the Ferguson Moving & Storage Co., a corporation organized under the laws of the State of Ohio and engaged in the business of moving and storing merchandise, entered into a contract with the United States, through Headquarters, Ohio Military District, for the packing, crating, the marking, and for unpacking and uncrating of

household goods, and for handling and marking of "hold baggage" during the period of July 1, 1952, to June 30, 1953, inclusive. On September 10, 1952, the warehouse of the Ferguson Co., located in Cincinnati, Ohio, in which was stored the property of more than 50 members of the Army and the Air Force, was severely damaged by fire. As a result of the fire, these military personnel sustained losses by reason of damage to and destruction of their household goods in varying amounts. Lt. Eugene Gardner, Col. Byron M. Barbeau, Maj. John R. Reaves, and Maj. Jackson L. Hardy sustained losses which have been determined by the Department of the Army, under regulations prescribed by the Secretary of the Army in accordance with the Military Personnel Claims Act of 1945 (59 Stat. 225), as amended (31 U. S. C. 222c), to be in excess of $2,500. However, the act of July 3, 1952 (Public Law 439, 82d Cong.), placed a maximum limitation of $2,500 on the amount which can be paid administratively under the provisions of the Military Personnel Claims Act of 1945, supra, the only statute under which these claims can be considered. The claims of these four officers have been allowed administratively in the amount of $2,500, and a check in that amount has been sent to each of them. After the making of such payments, there remains a balance of damages sustained by these officers for which they have not been compensated. There is no method by which they may be reimbursed for the remaining portions of their losses other than through the enactment by the Congress of private legislation for their relief.

The Department of the Army advises in its report that all of the household goods, for the damages to which these claims have been determined to be meritorious, were reasonable, useful, necessary, or proper for the claimants to have owned and had in their possession under the attendant circumstances. The losses occurred incident to their service while the household goods were bailed to an agent of the United States, and without any fault or neglect on the part of the officers involved. No part of the damages for which reimbursement is sought for these personnel by this proposed legislation was covered by insurance. Each of these officers has made a demand upon the Ferguson Moving & Storage Co. for reimbursement of the loss sustained, but liability therefor has been denied by such company.

The Department of Justice has commenced a civil action against the Ferguson Co. for the loss sustained by the United States as a result of this fire. Inasmuch as the United States has instituted an action against the Ferguson Moving & Storage Co., and in order not to risk placing in jeopardy any right, title, and interest in and to any claim which the Government has as a result of this fire, a proviso to that effect has been inserted in this proposed legislation.

The Department of the Army, in recommending favorable consideration of this proposed legislation, stated that each of the individuals for the relief of whom this legislation is proposed has served faithfully and honorably in the Army, and that to require such personnel to bear these losses would place an extreme hardship upon them.

The Congress has from time to time considered favorably claims of members of the Armed Forces for loss of personal property in excess of the $2,500 limitation placed upon administrative payments under the provisions of the Military Personnel Claims Act of 1945. Recent cases are Private Law 494, 83d Congress, for the relief of Paul G. Kendall, and Private Law 497, 83d Congress, for the relief of Walter Carl Sander.

The committee is constrained to recommend that this legislation be favorably considered, in view of the fact that the losses occurred while these officers were on active duty in the Army and their household goods were bailed to the United States pursuant to competent authority and, further, that it would be inequitable to require these officers to bear the burden themselves. Accordingly, the committee recommends that this bill, H. R. 8306, be favorably considered.

A complete inventory relating to the loss sustained by each of the claimants in this proposed legislation is on file with the committee.

Attached hereto and made a part hereof is the report and pertinent information submitted by the Department of the Army in connection with this bill.

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DEPARTMENT OF THE ARMY,
*Washington, D. C., December 7, 1955.*

Hon. SAM RAYBURN,
*Speaker of the House of Representatives.*

DEAR MR. SPEAKER: There is enclosed herewith a draft of a bill for the relief of Eugene Gardner, Byron M. Barbeau, John R. Reaves, and Jackson L. Hardy. The submission of this proposed legislation is in accordance with procedures approved by the Secretary of Defense.

The purpose of this proposed legislation is to reimburse these Reserve officers for the losses sustained by them as the result of damage to their household goods. The losses occurred while these officers were on active duty in the Army and their household goods were bailed to an agent of the United States pursuant to competent authority.

On or about June 24, 1952, the Ferguson Moving & Storage Co., a corporation organized under the laws of the State of Ohio and engaged in the business of moving and storing merchandise, entered into a contract with the United States, through Headquarters, Ohio Military District, for the packing, crating, and marking, and for unpacking and uncrating of household goods, and for handling and marking of "hold baggage" during the period of July 1, 1952, to June 30, 1953, inclusive. On September 10, 1952, the warehouse of the Ferguson Co., located at 1220 Harrison Avenue, Cincinnati, Ohio, in which was stored the property of more than 50 members of the Army and the Air Force, was severely damaged by fire. As a result of the fire, these military personnel sustained losses by reason of damage to and destruction of their household goods in varying amounts, and 1st Lt. Eugene Gardner, Col. Byron M. Barbeau, Maj. John R. Reaves, and Maj. Jackson L. Hardy sustained losses which have been determined by this Department, under regulations prescribed by the Secretary of the Army in accordance with the Military Personnel Claims Act of 1945 (59 Stat. 225), as amended (31 U. S. C. 222c), to be in excess of $2,500. However, the act of July 3, 1952 (Public Law 439, 82d Cong.; 66 Stat. 322), placed a maximum limitation of $2,500 on the amount which can be paid administratively under the provisions of the Military Personnel Claims Act of 1945, supra, the only statute under which these claims can be considered. The claims of these 4 officers have been allowed administratively in the amount of $2,500, only, and a check in that amount has been sent to each of them. After the making of such payments, there remains a balance of damages sustained by these officers for which they have not been compensated. There is no method by which they may be reimbursed for the remaining portions of their losses other than through the enactment by the Congress of private legislation for their relief. There is enclosed herewith a memorandum setting forth personal data relating to these officers and pertinent facts concerning each of the claims enumerated in the proposed bill.

All of the household goods, for the damages to which these claims have been determined to be meritorious, were reasonable, useful, necessary, or proper for the claimants to have owned and had in their possession under the attendant circumstances. The losses occurred incident to their service while the household goods were bailed to an agent of the United States, and without any fault or neglect on the part of the officers involved. No part of the damages for which reimbursement is sought for these personnel by this proposed legislation, was covered by insurance. Each of these officers has made a demand upon the Ferguson Moving & Storage Co. for reimbursement of the loss sustained, but liability therefor has been denied by such company.

The Department of Justice has commenced a civil action against the Ferguson Co. for the loss sustained by the United States as a result of this fire. Paragraph 13, Army Regulations 25–100, dated August 20, 1953, which contains similar language to that of its predecessor (AR 25–100, January 16, 1950), implementing the Military Personnel Claims Act of 1945, as amended, provides as follows:

"*Transfer of rights against carrier or insurer.*—Whenever a carrier or insurer denies liability or fails to satisfy such liability and a claim for the property in relation to which the claim is made is approved under these regulations without deduction of the amount for which the carrier or insurer is deemed liable, the claimant by the acceptance of payment of such claim under these regulations will be deemed to have assigned to the United States to the extent of his right, title, and interest in and to any claim he may have against the carrier or insurer and to have agreed that he will, upon request, execute and deliver to the United States a written assignment thereof, together with the original or a copy of the bill of lading or contract, insurance policy, and all other papers which may be required to enable the United States to press the claim against the carrier or insurer. Upon the settlement of his claim by the United States, the claimant will be considered to have agreed to refund to the Government the amount of any subsequent recovery from the carrier or insurer."

Inasmuch as the United States has instituted an action against the Ferguson Moving & Storage Co., and in order not to risk placing in jeopardy any right, title, and interest in and to any claim which the Government has as a result of this fire, a proviso to that effect has been inserted in this proposed legislation.

Each of the individuals for the relief of whom this legislation is proposed has served faithfully and honorably in the Army and to require such personnel to bear these losses would be an extreme hardship on them. Accordingly, the Department of the Army recommends that this proposed legislation be enacted by the Congress.

The Congress, from time to time, has considered favorably claims of members of the Armed Forces for loss of personal property in excess of the $2,500 limitation placed upon administrative payments under the provisions of the Military Personnel Claims Act of 1945. Recent cases are Private Law 494, for the relief of Paul G. Kendall (H. R. 5025); Private Law 497, for the relief of Walter Carl Sander (H. R. 685); and Private Law 933, for the relief of S. Sgt. Frank C. Maxwell (H. R. 7835), all enacted by the 83d Congress. An additional case, S. 3515, for the relief of John B. Gibbons, Jr., was under consideration by the Committee on the Judiciary, United States Senate, at the close of the second session of the 83d Congress, but it was not acted upon.

The total cost of this bill, if enacted, will be $8,436.01.

The Bureau of the Budget advises that there is no objection to the submission of the proposed legislation for the consideration of the Congress.

Sincerely yours,

CHARLES C. FINUCANE,
*Acting Secretary of the Army.*

MEMORANDUM OF FACTS CONCERNING THE CLAIMS REFERRED TO IN THE PROPOSED BILL "FOR THE RELIEF OF EUGENE GARDNER, BYRON M. BARBEAU, JOHN R. REABES, AND JACKSON L. HARDY"

There are submitted below a list of the claimants included in the proposed bill, personal data relating to them, and statement of the pertinent facts out of which their claims arose:

*1. Eugene Gardner*

Eugene Gardner was born in Augusta, Ga., on December 9, 1918, and he has remained on continuous active duty in the Army from February 15, 1942, the date of his initial enlistment. On January 5, 1952, he was commissioned in the Army of the United States, being assigned service No. O990521, and subsequently he attained the grade of first lieutenant.

On July 10, 1952, pursuant to competent orders, Lieutenant Gardner was relieved from his assignment to the Fifth Infantry Division, Indiantown Gap Military Reservation, Indiantown Gap, Pa, and was assigned to duty with the United States Army, Europe. In connection with these orders, the household goods of Lieutenant Gardner were packed and put into storage in the warehouse of the Ferguson Moving & Storage Co. on August 11, 1952. As a result of the fire which occurred thereat on September 10, 1952, these goods were damaged extensively. On October 6, 1953, Lieutenant Gardner filed a claim with this Department under the provisions of the Military Personnel Claims Act of 1945, as

amended, for reimbursement of his loss in the amount of $5,181. The claim was processed within this Department under regulations prescribed by the Secretary of the Army in accordance with the Military Personnel Claims Act. After giving effect to depreciation of the items involved in the claim, it was determined by this Department that the claim is meritorious in the amount of $3,979.40. However, in view of the limitation placed upon the amount which may be paid administratively on such claims by the act of July 3, 1952, a check in the amount of $2,500 has been sent to Lieutenant Gardner, leaving a balance of damages for which he has not been reimbursed in the amount of $1,479.40.

*2. Byron M. Barbeau*

Byron M. Barbeau was born at Waynesville, Ohio, on October 5, 1904. He is an officer in the Army of the United States being assigned service No. O918272, and was on active duty during the period of October 1, 1942, until September 20, 1947, and again from January 7, 1952, to September 16, 1953, when he reverted to inactive status in the grade of colonel.

On March 27, 1952, Colonel Barbeau received orders transferring him from duty at Fort Belvoir, Va., to Casablanca, in French Morocco.

Pursuant thereto, his household goods were removed from his home in Batavia, Ohio, on or about June 2, 1952, by a representative of the Ferguson Co., and they were transported to the warehouse in Cincinnati for packing and crating for overseas shipment. As a result of the fire occurring in this warehouse on September 10, 1952, these household goods were damaged extensively. The claim of Colonel Barbeau for reimbursement of his loss in the amount of $4,521, was filed with this Department on April 28, 1953, under the provisions of the Military Personnel Claims Act of 1945, as amended. Subsequently on November 18, 1953, after processing within this Department, it was determined that his claim is meritorious in the amount of $2,963.68. However, in accordance with the act of July 3, 1952, limiting the amount which may be paid administratively under this act, a check in the amount of $2,500 was sent to Colonel Barbeau, leaving a balance of damages for which he has not been reimbursed in the amount of $463.68.

*3. John R. Reaves*

John R. Reaves was born at Rutherford, N. J., on September 24, 1912. He served as an enlisted man in the Army from March 25, 1941, until May 28, 1942, at which time he was discharged to receive a commission in the Army of the United States. He has remained on active duty in commissioned status, service No. O1284575, from May 29, 1942, and has attained the grade of major.

On or about August 4, 1952, incident to orders, dated April 10, 1952, transferring Major Reaves from the ROTC Instructor Group, Fort Hayes, Columbus, Ohio, to duty in Salzburg, Austria, his household goods were delivered into the possession of the Ferguson Co. and transported to their warehouse in Cincinnati, Ohio. Thereafter, these goods were damaged extensively in the fire occurring thereat on September 10, 1952. His claim, in the amount of $10,764.71, for reimbursement of this loss under the provisions of the Military Personnel Claims Act of 1945, as amended, was filed with this Department on August 3, 1953, and, after processing, it was determined to be meritorious in the amount of $7,444.39, on January 12, 1954. However, in view of the monetary limitation placed on the amount which may be paid under this act, Major Reaves has received the amount of $2,500, only, leaving a balance of damages remaining unpaid in the amount of $4,944.39.

*4. Jackson L. Hardy*

Jackson L. Hardy was born at Hattiesburg, Miss., on December 14, 1905. He received an appointment as an officer in the Army of the United States on June 4, 1928, being assigned service No. O250977, and he has served on active duty in commissioned status continuously from December 1, 1941, achieving the grade of major.

During the latter part of August 1952, in connection with orders, dated July 7, 1952, effecting a permanent change of station of Major Hardy to Yokohama, Japan, he delivered his household goods to the transportation officer, ROTC Instructor Group, Cincinnati, Ohio, where he had been stationed. The goods were transported to the warehouse of the Ferguson Co. wherein, on September 10, 1952, they were damaged extensively. On April 14, 1953, Major Hardy submitted a claim to this Department under the Military Personnel Claims Act of 1945, as amended, for the loss sustained in this fire, in the amount of $6,846.12. After processing of the claim within this Department, it was determined on January 12,

1954, that the claim is meritorious in the amount of $4,048.54, but, because of the $2,500 limitation placed on the amount which may be paid under this act in any one case, a check in the amount of $2,500, only, was sent to Major Hardy. The amount of loss for which he has not been reimbursed is $1,548.54.

Amounts for which reimbursement is sought:

| | |
|---|---|
| Eugene Gardner | $1,479.40 |
| Byron M. Barbeau | 463.68 |
| John R. Reaves | 4,944.39 |
| Jackson L. Hardy | 1,548.54 |
| Total amount for which reimbursement is sought | 8,436.01 |

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Calendar No. 1926

84TH CONGRESS, 2d Session } SENATE { REPORT No. 1906

# NATHAN A. KAHN

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 8307]

The Committee on the Judiciary, to which was referred the bill (H. R. 8307) for the relief of Nathan A. Kahn, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

### PURPOSE

The purpose of the proposed bill is to reimburse the claimant, 1st Lt. Nathan A. Kahn, United States Army Reserve, 2915 Blackshear Avenue, Pensacola, Fla., in the amount of $1,568.40, for damages sustained by him on account of the loss and destruction of his household goods and personal effects by fire. This loss occurred while the officer was on active duty in the Army of the United States and the personal property was bailed to an agent of the United States incident to transportation in connection with orders releasing Lieutenant Kahn from active duty.

### STATEMENT

It appears that First Lieutenant Kahn was relieved from active duty on May 3, 1954, and, incident to his reversion to inactive status, he was assigned to the United States Army Reserve Control Group (Reinforcement) of the Military District of Alabama.

On April 27, 1954, while Lieutenant Kahn was stationed at Fort McPherson, Ga., he received orders directing him to proceed to his home of record in Mobile, Ala., on May 2, 1954, and releasing him from active duty effective May 3, 1954. Pursuant thereto, and on orders of the transportation officer, at Fort McPherson, Ga., his household goods and personal effects were stored in the warehouse of

the Washburn Storage Co., 268 Marietta Street NW., Atlanta, Ga. During the night of April 30, 1954, a fire broke out in the storage company's warehouse resulting in extensive damage to and destruction of various property stored therein, including the personal property belonging to Lieutenant Kahn.

The claimant, on December 7, 1954, filed a claim with the Department of the Army under the provisions of the Military Personnel Claims Act of 1945, as amended, for reimbursement of his loss in the amount of $7,564.25. At the same time, Lieutenant Kahn disclosed that he had received 2 checks from the General Adjustment Bureau, Atlanta, Ga., and Washburn Storage Co., in the sum of $327 in payment of their liability. The claim was processed in the Department of the Army and found to be meritorious in the amount of $4,395.40. Under Public Law 439, 82d Congress, there was placed a maximum limitation of $2,500 on the amount which could be administratively paid under the provisions of the Military Personnel Claims Act of 1945. Accordingly, Lieutenant Kahn's claim has been administratively allowed in the maximum amount of $2,500. After making the said payment, and after taking into account the amount of $327 received by the claimant in payment of the liability of the storage company, there remains a balance of $1,568.40 for which he has not heretofore been compensated. This legislation would reimburse him for the $1,568.40 differential found to be meritorious by the Department of the Army.

The Congress, from time to time, has considered favorably claims of members of the Armed Forces for loss of personal property in excess of the $2,500 limitation placed upon administrative payments under the provisions of the Military Personnel Claims Act of 1945. Cases similar to the subject case enacted by the 83d Congress include Private Law 494, for the relief of Paul G. Kendall (H. R. 5025); Private Law 497, for the relief of Walter Carl Sander (H. R. 685); and Private Law 933, for the relief of S. Sgt. Frank C. Maxwell (H. R. 7835).

The Department of the Army recommends this legislation to the favorable consideration of the committee, and after study, the committee recommends the bill, H. R. 8307, be considered favorably.

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DEPARTMENT OF THE ARMY,
*Washington, D. C., November 9, 1955.*

Hon. SAM RAYBURN,
*Speaker of the House of Representatives.*

DEAR MR. SPEAKER: There is enclosed herewith a draft of a proposed bill for the relief of Nathan A. Kahn, which it is recommended be enacted into law. This proposed legislation is submitted by the Department of the Army in accordance with the procedures prescribed by the Secretary of Defense.

The purpose of this legislation is to provide for the payment of $1,568.40 to 1st Lt. Nathan A. Kahn, United States Army Reserve, 2915 Blackshear Avenue, Pensacola, Fla., for the damages sustained by him on account of the loss and destruction of his household goods and personal effects by fire. This loss occurred while the officer was on active duty in the Army of the United States and the personal property was bailed to an agent of the United States incident to transportation in connection with orders releasing Lieutenant Kahn from active duty.

The records of the Department of the Army show that Nathan A. Kahn was born at Mobile, Ala., on April 1, 1930. He graduated from the University of Alabama in 1952 and, having completed the required training in the Army Reserve Officers' Training Corps at that institution, he was appointed a second lieutenant in the Officers' Reserve Corps on May 20, 1952. Second Lieutenant Kahn, service No. O–2005186, was ordered to extended active duty effective August 4, 1952, for 24 consecutive months. He was appointed a Reserve commissioned officer in the Army of the United States in the grade of first lieutenant on May 2, 1954. First Lieutenant Kahn was relieved from active duty on May 3, 1954, and, incident to his reversion to inactive status, he was assigned to the United States Army Reserve Control Group (Reinforcement) of the Military District of Alabama.

On April 27, 1954, while this officer was stationed at Fort McPherson, Ga., he received orders directing him to proceed to his home of record in Mobile, Ala., on May 2, 1954, and releasing him from active duty effective May 3, 1954. Pursuant thereto, and on orders of the transportation officer, at Fort McPherson, Ga., his household goods and personal effects were stored in the warehouse of the Washburn Storage Co., 268 Marietta Street NW., Atlanta, Ga. During the night of April 30, 1954, a fire broke out in the storage company's warehouse resulting in extensive damage to and destruction of various property stored therein, including the personal property belonging to Lieutenant Kahn.

This officer, on December 7, 1954, filed a claim with the Department of the Army under the provisions of the Military Personnel Claims Act of 1945 (59 Stat. 225; 31 U. S. C. 222c), as amended, for reimbursement of his loss in the amount of $7,564.25. In connection with the submission of this claim Lieutenant Kahn stated:

"* * * I received two checks from the General Adjustment Bureau [Atlanta, Ga.] and Washburn [Storage Co.] in payment of their liability at the rate of 30 cents per pound. This amounted to $327 [1,090 pounds at $0.30 per pound] and of course I realized I had to make a claim on the Government for the difference."

The claim submitted to the Department of the Army was processed under regulations prescribed by the Secretary of the Army in accordance with the Military Personnel Claims Act of 1945, supra. After giving effect to depreciation of the items involved in the claim, it was determined by this Department that the claim was meritorious in the amount of $4,395.40. However, the act of July 3, 1952 (Public Law 439, 82d Cong.; 66 Stat. 321), placed a maximum limitation of $2,500 on the amount which could be paid administratively under the provisions of the Military Personnel Claims Act of 1945, which was the only statute under which the claim could be considered. Accordingly, First Lieutenant Kahn's claim has been allowed administratively in the amount of $2,500, and a check in that amount has been sent to him. After the making of said payment, and after taking into account the amount of $327 received by Lieutenant Kahn in payment of the liability of the storage company, there remains a balance of damages sustained by the claimant in the sum of $1,568.40, for which he has not heretofore been compensated. There is no method by which he may be reimbursed for the remaining portion of this loss except through the enactment by the Congress of private legislation.

All of the personal property, for the damage to which this claim has

been determined to be meritorious, was reasonable, useful, necessary, or proper for the claimant to have owned and possessed under the attendant circumstances. The loss occurred incident to the service while the property was bailed to an agent of the United States and without any fault or neglect on the part of Lieutenant Kahn.

The claimant in this case is a young, married Reserve officer. It would be a rather severe hardship for him to bear the loss sustained as a result of this fire. It is the view of the Department of the Army that under the facts and circumstances, this claimant is justly and equitably entitled to recover the full amount of damages sustained by him. The Department, accordingly, recommends the enactment of this proposed legislation granting an award to the claimant in the sum of $1,568.40.

The Congress, from time to time, has considered favorably claims of members of the Armed Forces for loss of personal property in excess of the $2,500 limitation placed upon administrative payments under the provisions of the Military Personnel Claims Act of 1945. Cases similar to the subject case enacted by the 83d Congress include Private Law 494, for the relief of Paul G. Kendall (H. R. 5025); Private Law 497, for the relief of Walter Carl Sander (H. R. 685); and Private Law 933, for the relief of S. Sgt. Frank C. Maxwell (H. R. 7835).

The cost of this bill, if enacted, will be $1,568.40.

The Bureau of the Budget advises that there is no objection to the submission of the proposed bill for the consideration of the Congress.

Sincerely yours,

WILBER M. BRUCKER,
*Secretary of the Army.*

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Calendar No. 1927

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1907

# ARTHUR E. WEEDEN, JR.

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 8308]

The Committee on the Judiciary, to which was referred the bill (H. R. 8308) for the relief of Arthur E. Weeden, Jr., having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

### PURPOSE

The purpose of this proposed legislation is to pay the sum of $572.80 to Arthur E. Weeden, Jr., a Reserve Army officer to reimburse him for the loss sustained by him as a result of damage to his household goods while such household goods were bailed to an agent of the United States incident to transportation in connection with orders effecting a permanent change of station for this officer.

### STATEMENT

Arthur E. Weeden, Jr., on February 17, 1953, while in service on active duty in the grade of first lieutenant at the Artillery School, Fort Bliss, Tex., received orders transferring him to Camp Hanford, Wash. Pursuant thereto and on orders of the transportation officer at Fort Bliss his household goods were transported from his quarters in El Paso and stored in the warehouse of the Buckner Transfer & Storage Co., El Paso, Tex., on April 28, 1953. During the night of June 3, 1953, a fire broke out in this warehouse resulting in extensive damage to and destruction of various property stored therein, including the household goods belonging to Lieutenant Weedon.

On January 19, 1954, Lieutenant Weeden filed a claim with the Department of the Army under provisions of the Military Personnel Claims Act of 1945 for reimbursement of his loss in the amount of $4,224.76. The claim was processed by the Department of the Army and after giving effect to depreciation of the items involved in the

claim, it was determined by the Department that the claim is meritorious in the amount of $3,072.80. Lieutenant Weeden's claim could only be allowed administratively in the amount of $2,500 under the provisions of the Military Personnel Claims Act of 1945. Accordingly, he was paid in that amount. This left a residue of his claim, found to be meritorious by the Department of the Army, in the sum of $572.80. H. R. 8308 proposes to pay to Mr. Weeden the sum of $572.80 for the purpose of reimbursing him for the loss of his household goods.

The Department of the Army favors the enactment of this legislation.

The committee has in its files a complete inventory of said household goods of Arthur E. Weeden, Jr., which were damaged and destroyed in the aforesaid fire.

After a careful study of the foregoing facts, the committee recommends favorable action on this measure.

Attached hereto is the report of the Department of the Army.

DEPARTMENT OF THE ARMY,
*Washington, D. C., November 9, 1955.*

Hon. SAM RAYBURN,
*Speaker of the House of Representatives.*

DEAR MR. SPEAKER: There is enclosed herewith a draft of a bill for the relief of Arthur E. Weeden, Jr. The submission of this proposed legislation is in accordance with procedures approved by the Secretary of Defense.

The purpose of this proposed legislation is to reimburse this Reserve officer for the loss sustained by him as the result of damage to his household goods. The loss occurred while the officer was on active duty in the Army of the United States and the household goods were bailed to an agent of the United States incident to transportation in connection with orders effecting a permanent change of station of this officer.

Records of the Department of the Army show that Arthur E. Weeden, Jr., was born at Edgewood, R. I., on July 20, 1919; that he enlisted in the Army on October 14, 1941, and remained on active duty until November 14, 1945, being honorably discharegd in the grade of sergeant; that thereafter he received an appointment as second lieutenant in the Army of the United States, being assigned service number O2208015, and he served on active duty in that grade during the period of January 24, 1949, until December 31, 1949; that he served on active duty in the grade of sergeant first class (E–6) from January 4, 1950, until October 20, 1951, when he was discharged to commence activy duty in his Reserve officer grade; and that he served on extended active duty in commissioned status during the period of October 21, 1950, until February 28, 1954, when he reverted to inactive status in the grade of first lieutenant. At the present time he is serving on active duty in the grade of sergeant first class, his service number being RO11031638. He is married and has one minor child.

On Feburary 17, 1953, while Arthur E. Weeden, Jr., was serving on active duty in the grade of first lieutenant, he received orders transferring him from the Artillery School, Fort Bliss, Tex., and assigning him to Camp Hanford, Wash. Pursuant thereto, and on orders of the transpertation officer at Fort Bliss, his household goods

were transported from his quarters in El Paso and stored in the warehouse of the Buckner Transfer & Storage Co., located at 2301 Mills Street, El Paso, Tex., on April 28, 1953. During the night of June 3, 1953, a fire broke out in this warehouse resulting in extensive damage to and destruction of various property stored therein, including the household goods belonging to Lieutenant Weeden.

On January 19, 1954, Lieutenant Weeden filed a claim with the Department of the Army under the provisions of the Military Personnel Claims Act of 1945 (59 Stat. 225), as amended (31 U. S. C. 222c), for reimbursement of his loss in the amount of $4,224.76. The claim was processed within the Department of the Army under regulations prescribed by the Secretary of the Army in accordance with the Military Personnel Claims Act of 1945, *supra*. After giving effect to depreciation of the items involved in the claim, it was determined by this Department that the claim is meritorious in the amount of $3,072.80. However, the act of July 3, 1952 (Public Law 439, 82d Cong.; 66 Stat. 322), placed a maximum limitation of $2,500 on the amount which can be paid administratively under the provisions of the Military Personnel Claims Act of 1945, the only statute under which the claim could be considered. Accordingly, Lieutenant Weeden's claim has been allowed administratively in the amount of $2,500, and a check in that amount has been sent to him. After the making of said payment there remains a balance of damages sustained by the claimant in the sum of $572.80, for which he has not been compensated. There is no method by which he may be reimbursed for the remaining portion of this loss except through the enactment by the Congress of private legislation.

All of the household goods, for the damage to which the claim has been determined to be meritorious, were reasonable, useful, necessary, or proper for the claimant to have owned and had in his possession under the attendant circumstances. The loss occurred incident to his service while that household goods were bailed to an agent of the United States and without any fault or neglect on the part of Lieutenant Weeden.

On April 28, 1953, when Lieutenant Weeden's household goods were delivered to the warehouse of the Buckner Transfer & Storage Co. in El Paso, Tex., that company, representing United Van Lines, Inc., issued to him a document which apparently insured against all risks of physical loss or damage to the property while it was stored and in transit to destination. However, after the loss was incurred, all liability therefor was denied completely by the Buckner Co., both on the theory of lack of negligence and under the purported insurance. Paragraph 13, Army Regulations 25–100, dated August 20, 1953, implementing the Military Personnel Claims Act of 1945, *supra*, provides as follows:

"*Transfer of rights against carrier or insurer.*—Whenever a carrier or insurer denies liability or fails to satisfy such liability and a claim for the property in relation to which the claim is made is approved under these regulations without deduction of the amount for which the carrier or insured is deemed liable, the claimant by the acceptance of payment of such claim under these regulations will be deemed to have assigned to the United States to the extent of his right, title, and interest in and to any claim he may have against the carrier or insurer and to have agreed that he will, upon request, execute and deliver to the

United States a written assignment thereof, together with the original or a copy of the bill of lading or contract, insurance policy, and all other papers which may be required to enable the United States to press the claim against the carrier or insurer. Upon settlement of his claim by the United States, the claimant will be considered to have agreed to refund to the Government the amount of any subsequent recovery from the carrier or insurer."

Inasmuch as the Department of Justice has under consideration the possibility of instituting action against the carrier or insurer, and in order not to risk placing in jeopardy any right, title, and interest in and to any claim which the United States has as a result of this fire, a proviso to that effect has been inserted in this proposed legislation.

The Congress, from time to time, has considered favorably claims of members of the Armed Forces for loss of personal property in excess of the $2,500 limitation placed upon administrative payments under the provisions of the Military Personnel Claims Act of 1945. Recent cases are Private Law 494, for the relief of Paul G. Kendall (H. R. 5025); Private Law 497, for the relief of Walter Carl Sander (H. R. 685); and Private Law 933, for the relief of Staff Sergeant Frank C. Maxwell (H. R. 7835), all enacted by the 83d Congress. An additional case, S. 3515, for the relief of John B. Gibbons, Jr., was under consideration by the Committee on the Judiciary, United States Senate, at the close of the 2d session of the 83d Congress, but it was not acted upon. H. R. 5633, 84th Congress, for the relief of John L. Boyer, Jr., a bill to compensate that Reserve officer for the loss of personal property in excess of $2,500, which also occurred in the fire at the warehouse of the Buckner Transfer & Storage Co. on June 3, 1953, was passed by the House of Representatives and was referred to the Committee on the Judiciary, United States Senate, on May 19, 1955, where it is now pending.

The total cost of this bill, if enacted, will be $572.80.

The Bureau of the Budget advises that there is no objection to the submission of the proposed legislation for the consideration of the Congress.

Sincerely yours,

WILBER M. BRUCKER,
*Secretary of the Army.*

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Calendar No. 1928

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1908

# C. W. O. GEORGE C. CARTER

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 8310]

The Committee on the Judiciary, to which was referred the bill (H. R. 8310) for the relief of C. W. O. George C. Carter, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE

The purpose of the proposed legislation is to authorize and direct the Secretary of the Treasury to pay the sum of $1,432.35 to C. W. O. George C. Carter, 537 Meadow Lane, Collinsville, Ill., in full satisfaction and final settlement of his claim against the United States for the destruction of his household goods and personal property by a fire which occurred on December 27, 1954, in the building in which Chief Warrant Officer Carter and his family were residing, pursuant to a private rental agreement, at the time when he was on duty with the United States Army in France.

### STATEMENT

Records of the Department of the Army disclose that Chief Warrant Officer Carter and his family occupied an apartment in the Grimault Building, located at La Bessoniere in Dieu, Meuse, France. This building is an old mill in which five apartments were built, including sheds and a big attic. There were 3 apartments on the first floor, 2 of them looking out upon the yard, and the other looking out upon the garden. The other 2 were on the second floor, 1 looking out upon the yard and the other the garden. All five apartments in the building were occupied by American soldiers and their dependents. Chief

Warrant Officer Carter and his family occupied the apartment on the second floor looking out upon the garden.

On December 27, 1954, at approximately 9 p. m. a fire, which apparently started in the attic above the apartment occupied by Chief Warrant Officer Carter and his family, completely destroyed the apartment as well as the furniture and personal property located therein. Only one room of the apartment on the first floor was destroyed, this apartment being located below the kitchen and dining room of the Carter apartment. The rest of the building suffered from water damage. An investigation revealed that the fire might have been caused by a defective chimney, of which only the flue liner from the first floor was used, no heating device being connected on the second floor.

On June 17, 1955, Chief Warrant Officer Carter filed a claim with the Department of the Army for consideration under the provisions of the Military Personnel Claims Act of 1945, as amended (31 U. S. C. 222c), for reimbursement in the amount of $4,670.95. The claim was processed under the regulations prescribed by the Secretary of the Army, in accordance with the Military Personnel Claims Act of 1945, supra. After giving effect to depreciation of the items involved in the claim, it was determined by the Department of the Army that the claim was meritorious in the amount of $3,932.35. However, Public Law 439, 82d Congress, dated July 3, 1952 (66 Stat. 321), placed a maximum limitation of $2,500 on the amount which could be administratively paid under the provisions of the Military Personnel Claims Act, which was the only statute under which the claim could be considered. Accordingly, the claim has been administratively allowed in the maximum amount of $2,500. The claimant has not been compensated for the remaining portion of his loss, which has been determined by the Department of the Army to be $1,432.35. There is no way in which Chief Warrant Officer Carter can be compensated for this remaining portion of his loss other than through the enactment of special legislation for his relief. The loss was incurred incident to his service, without any fault or neglect on his part.

The committee notes that the claimant was living in a building off the base pursuant to a private rental agreement. Claims of this type have been payable under provisions of the Military Personnel Claims Act.

The committee is of the opinion that this is a meritorious claim, in view of the fact that the loss suffered by the claimant was incident to his service and occurred without any fault or neglect on his part. Accordingly, the committee recommends that this bill, H. R. 8310, be favorably considered.

There is on file with the committee a complete inventory of losses in connection with this claim.

Attached hereto and made a part hereof is the report of the Department of the Army submitted in connection with this claim.

DEPARTMENT OF THE ARMY,
*Washington, D. C., October 3, 1955.*

Hon. SAM RAYBURN,
*Speaker of the House of Representatives.*

DEAR MR. SPEAKER: There is enclosed herewith a draft of a bill for the relief of C. W. O. George C. Carter. The submission of this proposed legislation is in accordance with procedures approved by the Secretary of Defense.

The purpose of this proposed bill is to reimburse the claimant for the complete destruction of his household goods and personal property. The property in question was destroyed by fire which occurred in the building (known as Scherick Mill) in which Chief Warrant Officer Carter and his family were residing pursuant to a private rental agreement at the time he was on duty with the United States Army in France.

George C. Carter was born on October 19, 1921, at Prichard, Ala. is married and has two minor children. He served with the Alabama National Guard in an inactive status from June 17, 1940, to November 24, 1940; was called to active duty in the Army on November 25, 1940, as private; and was discharged as sergeant on July 2, 1943, for the convenience of the Government to accept a commission as a second lieutenant, Army of the United States (temporary) and was assigned Serial No. O1798115. He was promoted to first lieutenant on April 16, 1945; was released from active duty on January 14, 1946; was recalled to active duty as first lieutenant, Corps of Military Police Reserve, on November 2, 1948; and was released from active duty on June 30, 1949. On July 11, 1949, he enlisted in the Army as master sergeant, Army Serial No. RO20414539; was discharged on January 17, 1952, for the convenience of the Government to accept an appointment as warrant officer junior grade, serial No. W2150700; and on February 28, 1955, received a promotion to chief warrant officer.

The Grimault building, called the Scherick Mill, located at La Bessoniere in Dieu, Meuse, France, is an old mill in which five apartments were built, including sheds and a big attic. There were 3 apartments on the first floor, 2 of them looking out upon the yard and the other looking out upon the garden. The other two were on the second floor, one looking out upon the yard and the other the garden. All five apartments in the building were occupied by American soldiers and their dependents. Chief Warrant Officer Carter with his wife and two minor children occupied the apartment on the second floor, looking out upon the garden.

On December 27, 1954, at approximately 9 p. m., a fire, which apparently started in the attic above the apartment occupied by Chief Warrant Officer Carter and his family completely destroyed the apartment, as well as the furniture and personal property located therein. Only one room of the apartment on the first floor was destroyed, this apartment being located below the kitchen and dining room of the Carter apartment. The rest of the building suffered from water. An investigation revealed that the fire might have been caused by a defective chimney, of which only the flue liner from the first floor was used, no heating device being connected on the second floor. The owner of the building stated, in pertinent part, "I do not know exactly the terms of the insurance since the said premises are considered as storage building and not as apartments."

On June 17, 1955, Chief Warrant Officer Carter filed a claim with the Department of the Army for consideration under the provisions of the Military Personnel Claims Act of 1945, as amended (31 U. S. C. 222c), for reimbursement in the amount of $4,670.95. The claim was processed under the regulations prescribed by the Secretary of the Army in accordance with the Military Personnel Claims Act of 1945, supra. After giving effect to depreciation of the items involved in the claim, it was determined in this Department that the claim

was meritorious in the amount of $3,932.35. However, Public Law 439, 82d Congress, dated July 3, 1952 (66 Stat. 321), placed a maximum limitation of $2,500 on the amount which could be administratively paid under the provisions of the Military Personnel Claims Act of 1945, supra, which was the only statute under which the claim could be considered. Accordingly, the claim has been administratively allowed in the maximum amount of $2,500. The claimant has not been compensated for the remaining portion of his loss which has been determined by this Department to be $1,432.35. There is no way in which Chief Warrant Officer Carter can be compensated for this remaining portion of his loss other than through the enactment of special legislation for his relief. The loss occurred incident to his service without any fault or neglect on his part.

The Congress, from time to time, has favorably considered claims of members of the Armed Forces for loss of personal property in excess of the $2,500 limitation placed upon administrative payments under the Military Personnel Claims Act of 1945, supra. Recent cases are Private Law 494, for the relief of Paul G. Kendall (H. R. 5025); Private Law 497, for the relief of Walter Carl Sander (H. R. 685); and Private Law 933, for the relief of S. Sgt. Frank C. Maxwell (H. R. 7835), all enacted by the 83d Congress. An additional case, S. 3515, for the relief of John B. Gibbons, Jr., was under consideration by the Committee on the Judiciary, United States Senate, at the close of the second session of the 83d Congress but was not acted upon.

The total cost of this bill, if enacted, will be $1,432.35.

The Bureau of the Budget advises that there is no objection to the submission of the proposed legislation for the consideration of the Congress.

Sincerely yours,

WILBUR M. BRUCKER.
*Secretary of the Army.*

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Calendar No. 1929

84TH CONGRESS, 2d Session } SENATE { REPORT No. 1909

# DANIEL O. HULSE, JR.

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 8311]

The Committee on the Judiciary, to which was referred the bill (H. R. 8311) for the relief of Daniel O. Hulse, Jr., having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

### PURPOSE

The purpose of the proposed bill is to reimburse the claimant, a former enlisted man, for the complete destruction of his household goods and personal property, in the sum of $256.20. The loss occurred while Sergeant Hulse was on active duty with the Army of the United States and while such goods were bailed to the United States incident to transportation in connection with his release from the military service.

### STATEMENT

It would appear that on June 18, 1954, prior to his release from the service on June 19, 1954, Sergeant Hulse's household goods and personal property were packed and picked up by Army authorities for shipment by truck from Fort Bliss, Tex., where he was stationed, to his home in Dallas, Tex. After arrival of the goods in Dallas, and before delivery to Sergeant Hulse, the warehouse and loading dock of the Sunset Motor Lines, which company had contracted to handle the shipment for the Government, burned to the ground on July 15, 1954. As a result of the fire, the household goods and personal effects of Sergeant Hulse were completely destroyed.

The claimant subsequently filed a claim with the Department of the Army in the amount of $3,597.44, for the loss sustained by him

for consideration under the provisions of the Military Personnel Claims Act of 1945. The claim was processed in the Department of the Army and found to be meritorious in the amount of $2,756.20. Under Public Law 439, 82d Congress, there was placed a maximum limitation of $2,500 on the amount which could be administratively paid under the provisions of the Military Personnel Claims Act of 1945. Accordingly, Sergeant Hulse's claim has been administratively allowed in the maximum amount of $2,500. This legislation would reimburse him for the $256.20 differential found to be meritorious by the Department of the Army.

The Congress, from time to time, has favorably considered claims of members of the Armed Forces for loss of personal property in excess of the $2,500 limitation placed upon administrative payments under the Military Personnel Claims Act of 1945, supra. Recent cases are Private Law 494, for the relief of Paul G. Kendall (H. R. 5025); Private Law 497, for the relief of Walter Carl Sander (H. R. 685); and Private Law 933, for the relief of S. Sgt. Frank C. Maxwell (H. R. 7835), all enacted by the 83d Congress. An additional case, S. 3515, for the relief of John B. Gibbons, Jr., was under consideration by the Committee on the Judiciary, United States Senate, at the close of the 2d session of the 83d Congress but was not acted upon.

The Department of the Army recommends this legislation to the favorable consideration of the committee, and after study, the committee recommends that the bill, H. R. 8311, be considered favorably.

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DEPARTMENT OF THE ARMY,
*Washington, D. C., August 16, 1955.*

Hon. SAM RAYBURN,
*Speaker of the House of Representatives.*

DEAR MR. SPEAKER: There is inclosed herewith a draft of a bill for the relief of Daniel O. Hulse, Jr. The submission of this proposed legislation is in accordance with procedures approved by the Secretary of Defense.

The purpose of this proposed bill is to reimburse this former enlisted man for the complete destruction of his household goods and personal property. The loss occurred while Sergeant Hulse was on active duty with the Army of the United States and while such goods were bailed to the United States incident to transportation in connection with his release from the military service.

On June 18, 1954, prior to his release from the service on June 19, 1954, Sergeant Hulse's household goods and personal property were packed and picked up by Army authorities for shipment by truck from Fort Bliss, Tex., where he was stationed, to his home in Dallas, Tex. After arrival of the goods in Dallas, and before delivery to Sergeant Hulse, the warehouse and loading dock of the Sunset Motor Lines, which company had contracted to handle the shipment for the Government burned to the ground on July 15, 1954. As a result of the fire the household goods and personal effects of Sergeant Hulse were completely destroyed.

Sergeant Hulse subsequently filed a claim with the Department of the Army in the amount of $3,597.44 for the loss sustained by him for consideration under the provisions of the Military Personnel

Claims Act of 1945, as amended (31 U. S. C. 222c). The claim was processed within the Department of the Army under regulations prescribed by the Secretary of the Army in accordance with the Military Personnel Claims Act of 1945, supra. After giving effect to depreciation of the items involved in the claim, it was determined in this Department that the claim was meritorious in the amount of $2,756.20. However, Public Law 439, 82d Congress, dated July 3, 1952 (66 Stat. 321), placed a maximum limitation of $2,500 on the amount which could be administratively paid under the provisions of the Military Personnel Claims Act of 1945, supra, which was the only statute under which the claim could be considered. Accordingly, Sergeant Hulse's claim has been administratively allowed in the maximum amount of $2,500. He has not been compensated for the remaining portion of his loss which has been determined by this Department to be $256.20. There is no way in which Sergeant Hulse can be compensated for this remaining portion of his loss other than through the enactment of special legislation for his relief. The loss occurred incident to his service, while his household goods and personal property were bailed to the United States and without any fault or neglect on his part.

The Congress, from time to time, has favorably considered claims of members of the Armed Forces for loss of personal property in excess of the $2,500 limitation placed upon administrative payments under the Military Personnel Claims Act of 1945, supra. Recent cases are Private Law 494, for the relief of Paul G. Kendall (H. R. 5025); Private Law 497, for the relief of Walter Carl Sander (H. R. 685); and Private Law 933, for the relief of S. Sgt. Frank C. Maxwell (H. R. 7835), all enacted by the 83d Congress. An additional case, S. 3515, for the relief of John B. Gibbons, Jr., was under consideration by the Committee on the Judiciary, United States Senate, at the close of the 2d session of the 83d Congress but was not acted upon.

The total cost of this bill, if enacted, will be $256.20.

The Bureau of the Budget advises that there is no objection to the submission of the proposed legislation for the consideration of the Congress.

Sincerely yours,

WILBER M. BRUCKER,
*Secretary of the Army.*

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Calendar No. 1930

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1910

# HILDEGARD L. McNABB

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany S. 1938]

The Committee on the Judiciary, to which was referred the bill (S. 1938) for the relief of Hildegard L. McNabb, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

### AMENDMENT

In line 7, change the period to a colon and add the following:

*Provided*, That these exemptions shall apply only to grounds for exclusion of which the Department of State or the Department of Justice has knowledge prior to the enactment of this Act.

### PURPOSE OF THE BILL

The purpose of the bill, as amended, is to waive the excluding provisions of existing law relating to the conviction of a crime involving moral turpitude and relating to the procurement of a visa by misrepresentation on behalf of the wife of a United States citizen member of our Armed Forces.

### STATEMENT OF FACTS

The beneficiary of the bill is a 28-year-old native and citizen of Germany who married a United States citizen member of our Armed Forces in Germany in 1954. She is presently residing in Germany with her husband and daughter. She was sentenced to 2 months'

imprisonment in 1947 for illegal possession of $20 in United States military scrip. It has also been indicated that she admitted an abortion. When she applied for a visitor's visa in 1954, she concealed her past record. Without the waiver provided for in the bill, she will be unable to enter the United States with her family to make her home.

A letter, with attached memorandum, dated December 1, 1955, to the then chairman of the Senate Committee on the Judiciary from the Commissioner of Immigration and Naturalization with reference to the bill reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
*Washington, D. C., December 1, 1955.*

Hon. HARLEY M. KILGORE,
*Chairman, Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

DEAR SENATOR: In response to your request for a report relative to the bill (S. 1938) for the relief of Hildegard L. McNabb, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Denver, Colo., office of this Service which has custody of those files.

The bill would permit this alien's admission to the United States for permanent residence notwithstanding the provisions of paragraphs (9) and (19) of section 212 (a) of the Immigration and Nationality Act if she is found to be otherwise admissible under the provisions of such act. The bill does not specifically limit the exemption granted the beneficiary to grounds for exclusion of which the Department of State or the Department of Justice has knowledge prior to the date of enactment of the bill.

Sincerely,

——— ———, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES CONCERNING HILDEGARD L. MCNABB, BENEFICIARY OF S. 1938

Information concerning the case was obtained from Mrs. Effie May McNabb, the beneficiary's mother-in-law, and from a petition for the issuance of an immigrant visa filed by the sponsor, Wayne Eugene McNabb, in behalf of the beneficiary. This visa petition was approved by this Service and forwarded to the Department of State on November 4, 1954.

Hildegard L. McNabb, a citizen of Germany, was born February 23, 1928, at Konigsberg, East Prussia, Germany. On September 13, 1954, she was married to Wayne Eugene McNabb, a citizen of this country, who is now serving in the United States Armed Forces in Germany. The beneficiary has never been in the United States and resides with her husband and minor daughter, Norman Jean Schlang, at Zweibrucken, Germany.

The beneficiary completed 8 years of schooling in Germany and is experienced as a secretary. She is supported by her

husband whose monthly income is approximately $350. She has no close relatives in the United States except her husband's parents who live in Denver, Colo. Her mother and an aunt reside in Germany.

The Immigration and Naturalization Service has no information concerning the reason for the necessity of obtaining exemption from the provisions of section 212 (a) (9) and 212 (a) (19) of the Immigration and Nationality Act to permit the beneficiary to enter the United States. It is suggested that the committee communicate with the Department of State for additional information concerning the beneficiary. Private bill S. 3841, 83d Congress, introduced in her behalf, was not enacted.

Senator Gordon Allott, the author of the bill, has submitted the following information in connection with the case:

AMERICAN CONSULATE GENERAL,
*Munich, Germany, December 15, 1954.*

Hon. EDWIN C. JOHNSON,
*United States Senate,*
*Washington, D. C.*

MY DEAR SENATOR JOHNSON: I have received your letter of November 20, 1954, in which you inquired again concerning the immigration case of Mrs. Hildegard McNabb, the wife of Mr. Wayne Eugene McNabb.

As you know, Mrs. McNabb was found inadmissible to the United States under sections 212 (a) (9) and 212 (a) (19) of the Immigration and Nationality Act. Therefore, we are unable to reconsider her case under section 4 of Public Law 770, 83d Congress, inasmuch as her inadmissibility under section 212 (a) (19) cannot be overcome by the provisions of that legislation.

An application for an American passport has been made for Mr. McNabb's daughter and a passport will be issued to her upon request.

Sincerely yours,

J. RAYMOND YLITALO,
*American Consul.*

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DENVER, COLO., *January 7, 1955.*

Hon. GORDON ALLOTT:

I am writing in regard to our daughter-in-law, Hildegard McNabb, and granddaughter, Norma Jean, who are living in Germany.

Our son, Wayne E. McNabb, was stationed in Germany from August 1950 to February 1954, but was unable to marry this girl due to some crime she had committed. He came home last February from Germany leaving his fiance and little girl behind. Yes; there was a little girl (our son's daughter). We tried to get them over here on a visitor's visa. When that failed, we wrote Senator Johnson asking his help. He introduced a special bill during the 83d Congress, but due to the short time left, it was never brought to a vote. Wayne had a wire from Senator Johnson telling him the bill was never brought to a vote, and told Wayne to return to Germany and marry Hildegard, which he did at a cost of $1,000 for his passage there and return.

Before Wayne returned to Germany he asked for his discharge so he could go back as a civilian. He was discharged June 1954 and

returned to Germany August 1954. He was married September 1954. He tried to reenlist in the Army over there, but was unable to do so. He couldn't even get a job, as he was married to a German national so we had to send him the money to return to the States, so he could get back in the Army. He lost one stripe by not getting back in before his time was up. He has 12 years' service in the United States Army and intends making a career of the Army. We would be forever grateful if something could be done to get them over.

She is a very sweet girl, and regrets very much the crime she committed. The letter from the American consulate says under sections 212 (s) 9 and 212 (a) (19) she was found inadmissible to the United States, and said they were unable to reconsider her case under section 4 of Public Law 770, 83d Congress, inasmuch as her inadmissibility under section 212 (a) (19) cannot be overcome by the provisions of that legislation. We will be responsible for Hildegard upon her arrival in this country. She has paid a thousand times for her mistake. I am writing Wayne, and breaking the news to him. He will probably write you too. Wayne's rank is sergeant, first class. We will appreciate it very much if you will give this your utmost attention. Thanking you we are,

Respectfully yours,

(Signed) Mr. and Mrs. RUSSELL McNABB.

P. S.—Am enclosing copy of the bill Senator Johnson introduced.

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FEBRUARY 11, 1956.

DEAR SENATOR ALLOTT: In regard to your letter of February 6, concerning my wife, am forwarding the following information:

I met Hildegard in the town of Kaufbeuren, just a few miles (8) from her mother's home, in August 1950 where at that time I was stationed. We became engaged 1 year later and in October 1951 I was promoted to warrant officer, at which time I was transferred to the 485th Engineers Battalion at Regersburg, where I was stationed from November 1951 to February 1954. Going back to when I met Hildegard, she then told me about the time she had spent 2 months in prison, back during the early part of the occupation, some time in 1947 she was picked up with $20 in American military script in her possession and was sentenced to 2 months in prison by a HICOG court, at Avgsburg.

I later stopped at the American consulate in Munich and found this to be true, also when trying to process my marriage papers prior to my leaving Germany, I had our unit personnel officer send the required form to Berlin where all records of crimes committed in Germany are filed, and it came back with the same information. This must be 212 (a) (9).

In February 1954 I departed for the United States and was stationed in California, but before I left Germany my parents in Denver started to process papers for her to visit the United States, which as you know, sir, was disapproved. I had written Hildegard from California and told her when she was called up before the consulate not to mention the past crime. I believe that is where 212 (a) (9) came into the act. In June 1954, I resigned from the Army and returned to Denver. I did not want to reenlist until I knew if Hildegard could enter the

United States or not. In July my parents received a letter, I believe from the Munich consulate, stating that her visa could not be approved. I immediately wrote Senator Ed Johnson and in early August 1954 received a copy of, I believe, S. 3841, also stating that time was against him as Congress was closing for the summer. I then wrote Senator Johnson asking him when soon as possible to please let me know as I would return to Germany and marry Hildegard. I received a telegram from Mr. Johnson later in August which I am enclosing. I left New York City August 27, 1954, on the steamship *America* and was married by the mayor of Baisweil, bei Kaufbener at my mother-in-law's home September 13, 1954. I could not reenlist into the Army, as at that time the bill had not been passed authorizing military persons married to German nationals to remain here. I then got a job in Stuttgart working for the Army as the assistant engineer account officer for Stuttgart, a very good job, but the same thing married to a German national. I then, while waiting for money to return to the United States, went to USAREUR headquarters and tried to get stationed in France, England or Italy; no opening. I arrived in New York November 8, 1954, and reenlisted the same day. Sir, I was in your office around January 4, 1955, when I talked with—I do not remember his last name—Phil, whom I am indebted to for getting me an interview with the Defense Department, and I was back in Germany February 27. Before I left Germany in November 1954, I visited the consulate and had my daughter's papers straightened out. She can enter the United States at any time.

Sir, our new baby will be born probably before you receive this letter, and in an Army hospital. It has cost me from Warrant back to sergeant, first class and hundreds of dollars trying to get Hildegard into the United States and is a hardship on my mother, but I will never give up. Although we live in Government quarters, in case of a general war, there is a plan called NEO to get dependents out of Germany, but not German nationals without visas. I can just see me sending my two children but leaving their mother here.

I want to express my appreciation for all that has and is being done. It makes me feel good to know someone is on my side. I also feel that if Hildegard isn't fit to enter our country, I know a few people that doesn't belong there also, and its in our newspapers every day.

Respectfully yours,

Sfc. WAYNE E. McNABB,
*RA37341109 Headquarters Det., 3d Repl. Bn.,*
*APO 872, care of Postmaster, New York.*

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 1938), as amended, should be enacted.

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Calendar No. 1931

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1911

# RELIEF OF CERTAIN FORMER EMPLOYEES OF THE INLAND WATERWAYS CORPORATION

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany S. 2048]

The Committee on the Judiciary, to which was referred the bill (S. 2048) for the relief of certain former employees of the Inland Waterways Corporation, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

### AMENDMENT

On page 2, lines 7 and 8, strike "in excess of 10 per centum thereof".

### PURPOSE

The purpose of the proposed legislation, as amended, is to provide for the payment to six named former employees of the Inland Waterways Corporation of certain sums of money representing lump-sum annual-leave payments, retroactive wage increases, and other salary and wages, earned or accrued by the said employees prior to their discharge from the employ of such Corporation, such amounts having been withheld pursuant to provisions of section 305 of the Government Corporations Appropriation Act of 1947.

### STATEMENT

This identical claim, as amended, was reported favorably by the Committee (S. 1737) in the 83d Congress but was not voted on by the Senate.

In the month of November 1946, a work stoppage occurred in the operations of the Inland Waterways Corporation at St. Louis, Mo. This work stoppage occurred on November 4, 5, and 6. A number of workers, including the named persons in the bill, did not work on these 3 days.

Subsequent to the work stoppage, 18 employees of the Corporation, who, according to determination made by the Department of Commerce, had engaged in a strike against the Government, were permitted to return to work for the Corporation and the Government on November 7, 1946. The Department of Commerce then determined that these employees should be discharged. Under the provisions of the Government Corporations Appropriation Act of 1947, the Comptroller General of the United States determined that these employees who had engaged in a strike against the Government could not be paid out of funds available to the Inland Waterways Corporation.

In the 80th Congress, as a part of the Government Corporations appropriation bill, the House of Representatives inserted a provision for the payment of these 18 employees on account of services actually performed both prior and subsequent to the aforementioned strike. The House Appropriations Committee requested the views of the Department of Commerce as to the legal as well as the equitable rights of these 18 claimants. A letter dated April 23, 1948, from the Acting Secretary of Commerce to the House Appropriations Committee contained the following recommendations:

> As this was the first case involving a strike by Government employees under section 305 of the Government Corporations Appropriations Act, 1947, and the full ramifications of the law had not been passed on by the Comptroller General at the time of the strike, and the further fact that the chief purpose of this prohibition has been accomplished by the discharge of the striking employees, this Department recommends congressional authorization permitting payment to these men for the amount due them for work performed and leave accrued.

Thereafter, the House Appropriations Committee in authorizing the payment for services actually performed by these claimants stated in part in its report:

> The committee is completely unable to understand why the Department of Commerce permitted the employees who engaged in a strike against the Government to perform work for a Government agency subsequent to such a strike. The employment of these persons, determined to have engaged in a strike against the Government, was not authorized by law and was, to say the least, an improper exercise of judgment by the then Secretary of Commerce. Notwithstanding the technicalities of law and the erroneous decision made at the time by the Department of Commerce, it is clear that the Government has been unjustly enriched by accepting the services of these individuals unless proper compensation is paid to them. Therefore, the committee

has provided authority in the accompanying bill, which will permit the Corporation to pay the aforementioned persons. This action should in nowise be construed as affecting the status of such employees with respect to future employment by the Government nor as constituting a precedent in the future as an exception to the general provisions incorporated in all appropriation acts prohibiting the employment of persons who strike against the Government or advocate the right to strike against the Government, and so forth (H. Rept. 1880, 80th Cong., 2d sess.).

The Senate amended the House provision by striking out the language providing for payment to the 18 employees, and in conference it was agreed to pay 12 former employees for services actually rendered. No provision in that act was therefore made to reimburse the 6 persons who are the claimants in the instant bill.

The Department of Commerce in reporting on the instant bill is of the opinion that this legislation should not be considered favorably on the ground that favorable consideration would have the effect of lessening the penalty incident to removal for striking against the United States Government by authorizing payment for unpaid salary, annual-leave payments and other salary or wages due on date of removal.

The committee is constrained to disagree with the report of the Department of Commerce. No evidence has been presented to the committee which would place the 6 named employees in any different category than the 12 employees who already have received benefits by act of Congress. It would appear extremely difficult to distinguish the intent or the lack of intent to strike on the part of any of these 18 employees and the Commerce Department furnishes this committee no evidence which would back up the assertion that 6 of these employees had the intent to strike.

The committee believes that where there is no showing that these 6 employees had the intent to strike as distinguished from the other 12 men and therefore why they should be placed in a different position than those already paid by the Congress. The committee believes that in equity and justice, these employees should be reimbursed and placed in the same category as the 12 employees who have already received relief from the Congress.

No sound reason appears why the Congress should not pay these six former employees for services actually performed. The committee can see no reason why these six men should not be accorded the same treatment as the others who have merited the grace of Congress.

The bill has been amended by striking the provision for attorney's fees, inasmuch as the committee's records fail to show any substantial services rendered by any attorney in connection with this claim.

The committee therefore recommends favorable consideration of this bill. Attached hereto and made a part hereof is the report submitted by the Department of Commerce on S. 1737, a similar bill introduced in the 83d Congress.

THE SECRETARY OF COMMERCE,
*Washington, December 1, 1953.*

Hon. WILLIAM LANGER,
*Chairman, Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

DEAR MR. CHAIRMAN: This letter is in reply ot your request of April 29, 1953, for the views of this Department with respect to S. 1737, a bill for the relief of certain former employees of the Inland Waterways Corporation.

This bill would provide payment to six former employees of the Inland Waterways Corporation of certain sums of money representing lump-sum annual leave payments, retroactive wage increases, and other salary and wages which were withheld by the Corporation under the provisions of section 305 of the Government Corporations Act of 1947 at the time of their separation from the service for engaging in a strike against the United States Government during the fiscal year of 1948.

Upon request from this Department, the Comptroller General issued an opinion that payments made by Inland Waterways Corporation to the strikers for any purpose would be illegal under the provisions of section 305 of the Government Corporations Appropriations Act, 1947, Public Law 519 (79th Cong.). In view of this opinion, the Corporation did not make any payments and it appeared that if the men were to be paid, special legislation was necessary.

Investigations were made by the Department of Commerce and it was found that, except for the six employees to whom relief would be granted under the terms of S. 1737, the strikers were largely a group of illiterate laborers, many of whom did not even realize that they were working for a Government corporation, and whose actions, although constituting a strike because they stopped work, were made under the active leadership of others.

As this incident was the first case involving a strike by Government employees since the enactment of section 305 of the Government Corporations Appropriations Act of 1947, when its provisions were not yet widely known or understood, there was some sentiment in favor of leniency toward the strikers. Congress subsequently authorized relief in the form of payment of wages, lump-sum leave due, etc., for the 12 men who were believed to have lacked the intent to strike against the Government, but did not include the other 6 employees who would be granted relief by S. 1737.

The Department is of the opinion that the action taken to remove these employees was proper. We do not approve of legislation which would have the effect of lessening the penalty incident to removal for striking against the United States Government by authorizing payment for unpaid salary, annual-leave payments, and any other salary or wages due on date of removal. We consider that the enactment of legislation along the lines of S. 1737 would set a precedent for introduction of other bills and the effect of antistrike provisions would be considerably weakened.

In order that Government operations may be carried on without hindrance, we believe that there should be no alleviation in the severity of the law relating to withholding unpaid compensation from

persons who strike against the Government. We therefore recommend against the enactment of S. 1737.

We have been advised by the Bureau of the Budget that while there would be no objection to the presentation to your committee of this report, it is the view of the Bureau of the Budget that the bill should be amended so as to authorize payment to these six former employees for services rendered to the Government only during the period between November 6 and December 4, 1946.

These dates are the date of termination of the strike and the date of termination of employment of the individuals concerned. Adoption by the committee of the views of the Bureau of the Budget in this matter would require a search of the records of the Corporation to determine the exact amount earned by each employee during this period. This information will be provided upon your request.

If we can be of further assistance in this matter, please call on us.

Sincerely yours,

SINCLAIR WEEKS,
*Secretary of Commerce.*

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Calendar No. 1932

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1912

# ANNIEMAE M. SWANSON AND ARMYLEE V. SWANSON

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany S. 2840]

The Committee on the Judiciary, to which was referred the bill (S. 2840) for the relief of Anniemae M. Swanson and Armylee V. Swanson, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

### AMENDMENT

In line 9, following the word "fees.", strike the remainder of the bill.

### PURPOSE OF THE BILL

The purpose of the bill, as amended, is to grant the status of permanent residence in the United States to Anniemae M. Swanson and Armylee V. Swanson. The bill provides for the payment of the required visa fees. The purpose of the amendment is to remove the quota charges, since in similar cases where provision is made for the admission of alien adopted children of United States citizens, they are treated as nonquota immigrants.

### STATEMENT OF FACTS

The beneficiaries of the bill are sisters, 12 and 14 years of age, who entered the United States at Miami, Fla., on April 14, 1955, as visitors. They were born in the British West Indies, the illegitimate daughters of Mrs. Swanson, who married a United States citizen and former member of our Armed Forces on June 15, 1954, in Habana, Cuba.

Her previous marriage was terminated by divorce September 9, 1952. The beneficiaries were adopted by her present husband at Alexandria, Minn., on November 8, 1955, and the family presently resides there. The adoptive father is self-employed and information is to the effect that he is financially able to care for the children adequately.

A letter, with attached memorandum, dated March 26, 1956, to the chairman of the Senate Committee on the Judiciary from the Commissioner of Immigration and Naturalization with reference to the bill reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
*Washington, D. C., March 26, 1956.*

HON. JAMES O. EASTLAND,
*Chairman, Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

DEAR SENATOR: In response to your request for a report relative to the bill (S. 2840) for the relief of Anniemae M. Swanson and Armylee V. Swanson, there is attached a memorandum of information concerning the beneficiaries. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiaries by the St. Paul, Minn., office of this Service, which has custody of those files.

The bill would grant the beneficiaries permanent residence in the United States upon payment of the required visa fees. It would also direct that the required numbers be deducted from the appropriate immigration quota.

The beneficiaries are chargeable to the quota for Great Britain, subquota for Jamaica.

Sincerely,

J. W. SWING, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE ANNIEMAE M. SWANSON AND ARMYLEE V. SWANSON, BENEFICIARIES OF S. 2840

Information concerning this case was obtained from Mrs. Ianthy Swanson, the beneficiaries' mother.

The beneficiaries, Anniemae M. Swanson and Armylee V. Swanson, natives of the Grand Cayman Islands, British West Indies, and citizens of Great Britain, were born on November 26, 1943, and September 15, 1941, respectively and are the illegitimate daughters of Mrs. Ianthy Swanson. They reside with their parents at 1417 Broadway, Alexandria, Minn. The beneficiaries are students in grammar school.

The beneficiaries entered the United States at Miami, Fla., on April 14, 1955, as visitors. Extensions of stay were authorized to April 14, 1956. On February 1, 1956, their father was notified that they had failed to comply with the conditions of their admission and that their lawful status was terminated. Deportation proceedings are being instituted on the ground that they have failed to maintain their visitor status.

The beneficiaries' mother married Walter J. O'Connor on February 2, 1950, and was divorced from him on September 9, 1952. She married Eugene Warner Swanson, a citizen of the United States, in Habana, Cuba, on June 15, 1954. Mrs. Swanson was admitted to the United States for permanent residence on September 11, 1954.

Mr. Eugene Swanson's previous marriage to Lucille L. Hall was terminated by divorce on November 13, 1953. He served honorably in the United States Air Force from March 10, 1944, to December 31, 1946. Mr. Swanson is self-employed and has an annual income of $17,500. He has assets valued at $40,000.

The beneficiaries were adopted by Mr. Swanson at Alexandria, Minn., on November 8, 1955.

Senator Hubert H. Humphrey, the author of the bill, has submitted the following information in connection with the case:

UNITED STATES SENATE,
*Washington, D. C., February 25, 1956.*

Re S. 2840, Anniemae and Armylee Swanson.
Hon. HARLEY M. KILGORE,
*Chairman, Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

DEAR SENATOR KILGORE: I am bringing to your attention certain facts relative to my bill, S. 2840, for the relief of Anniemae M. and Armylee V. Swanson, natural-born minor children of Mrs. Ianthy Bodden Swanson, a native of the British West Indies and presently a permanent resident alien of the United States.

The children are the issue of Mrs. Swanson and her deceased former husband, Allen B. Bodden. Upon her marriage to Mr. Eugene Swanson, a citizen by birth in the United States, nonquota immigrant status was conferred upon Mrs. Swanson, but her children were entitled only to third preference under the subquota allotted to the British West Indies. To avoid separating the children from their mother, they were permitted to enter the United States on visitors' visas.

On the 8th of November 1955, the 2 girls, whose ages are 12 and 14, were legally adopted in the District Court, Douglas County, Minn., by their stepfather, Eugene Swanson. Certified copies of the adoption records are attached.

It is urged that favorable consideration be given to S. 2840 which would permit the Swanson children to remain permanently in the United States with their mother and adoptive father.

Sincerely yours,

HUBERT H. HUMPHREY.

ALEXANDRIA, MINN., *November 10, 1955.*

Hon. HUBERT H. HUMPHREY,
*Senator from Minnesota,*
*Senate Office Building, Washington, D. C.*

DEAR SENATOR HUMPHREY: We represent Eugene Warner Swanson who, on the 15th day of June 1954, married Ianthy Iola Swanson at Habana, Cuba. Mrs. Swanson was at the time of their marriage a citizen of British West Indies. At the time of her marriage to Mr. Swanson, Mrs. Swanson had two children, both of whom were born in the West Indies.

The children were admitted to the United States under a visitors' permit which has been extended to April 14, 1956. Under date of November 8, 1955, an adoption decree was issued by the district court of Douglas County, Minn., in which Mr. Swanson adopted these two girls.

The Swansons are informed that in order for the girls to be admitted to the United States as their children, they must return to the West Indies, there to await an opportunity to enter the country on a permanent basis.

After Mr. Swanson married his wife in Habana, he wrote to you and you were able to help him secure the admission of his wife to this country earlier than would have ordinarily been accomplished through the usual channels.

Mr. Swanson has asked that I write to you to determine if it is at all possible that these adopted children of his may remain in this country as his children without the necessity of having to return to their home country to await their turn for admission.

I would sincerely appreciate hearing from you as to any suggestions that you might have; and I am sure that the Swansons and myself would be deeply grateful to you for anything that you might do to avoid the seemingly unnecessary interruption of the family relationship for the purpose of returning these children to their home country.

For your convenience I enclose certified copies of the adoption decrees in each of these cases.

Very truly yours,

DELL & MCCARTEN
By JOHN J. MCCARTEN.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 2840), as amended, should be enacted.

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Calendar No. 1933

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1913

# DR. YONG WHAN KIM

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany S. 2883]

The Committee on the Judiciary, to which was referred the bill (S. 2883) for the relief of Dr. Yong Wham Kim, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

### AMENDMENT

Strike all after the enacting clause and insert in lieu thereof the following:

That for the purposes of the Immigration and Nationality Act, Dr. Yong Whan Kim shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act, upon payment of the required visa fee, under such conditions and controls which the Attorney General, after consultation with the Surgeon General, United States Public Health Service, Department of Health, Education, and Welfare, may deem necessary to impose: *Provided*, That a suitable and proper bond or undertaking, approved by the Attorney General be deposited as prescribed by section 213 of the said Act.

### PURPOSE OF THE BILL

The purpose of the bill, as amended, is to grant the status of permanent residence in the United States to Dr. Yong Whan Kim. The bill provides for the payment of the required visa fee and also provides for the posting of a bond as a guaranty that the beneficiary will not become a public charge.

STATEMENT OF FACTS

The beneficiary of the bill is 27-year-old native and citizen of Korea who entered the United States at Anchorage, Alaska, on April 8, 1950, as a visitor. While doing graduate work in medicine, he contracted tuberculosis and in 1953–54, he had treatment and surgery. Since March 1954 his case has been inactive. In August 1955 he married a United States citizen and they expect their first child in June 1956. The beneficiary and his wife are both employed by the Osawatomie State Hospital in Kansas. Information is to the effect that the hospital has great need for the beneficiary's services.

A letter, with attached memorandum, dated March 26, 1956 to the chairman of the Senate Committee on the Judiciary from the Commissioner of the Immigration and Naturalization Service with reference to the bill reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
*Washington, D. C., March 26, 1956.*

Hon. JAMES O. EASTLAND,
*Chairman, Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

DEAR SENATOR: In response to your request for a report relative to the bill (S. 2883) for the relief of Dr. Yong Whan Kim, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Kansas City, Mo., office of this Service, which has custody of those files.

The bill as drawn would not provide relief to the beneficiary. It appears that the bill is intended to authorize the beneficiary's admission to the United States notwithstanding his affliction with tuberculosis. It is suggested that, if the committee desires to grant relief to the beneficiary, the bill be amended to read as follows:

"That for the purposes of the Immigration and Nationality Act, Dr. Yong Whan Kim shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act, upon payment of the required visa fee, under such conditions and controls which the Attorney General, after consultation with the Surgeon General, United States Public Health Service, Department of Health, Education, and Welfare, may deem necessary to impose: *Provided*, that a suitable and proper bond or undertaking, approved by the Attorney General, be deposited as prescribed by Section 213 of the said Act."

Sincerely,

J. M. SWING, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE DR. YONG WHAN KIM, BENEFICIARY OF S. 2883

The beneficiary, Dr. Yong Whan Kim, also known as Chai Whan Kim, a native and citizen of Korea, was born on February 5, 1929. He married Stella Terwilliger, a United States citizen, on August 20, 1955. They are expecting their first child in June 1956. He resides with his wife at the Osawatomie State Hospital, Osawatomie, Kans.

The beneficiary is employed by the State of Kansas as a medical doctor. He attended elementary school in Korea, high school in Japan, and obtained his medical degree from the Seoul National University, Seoul, Korea. His present earnings are $481 a month. His wife, employed at the same hospital, earns $325 a month. They have $3,000 in savings. His parents reside in Korea. An uncle, presently under immigration proceedings, resides in the United States.

The beneficiary entered the United States as a visitor at Anchorage, Alaska, on April 8, 1950. Extensions of stay to April 6, 1953, were authorized. His application for adjustment of status to that of a permanent resident was denied on the ground that he was not in a lawful nonimmigrant status at the time his application was submitted. Deportation proceedings were instituted on the ground that he had remained in the United States for a longer period than permitted. On September 2, 1955, the special inquiry officer granted him voluntary departure, with the provision that, if he failed to depart when and as required, he be deported.

The beneficiary registered under the Universal Military Training and Service Act on January 23, 1956. The records of this Service indicate that the pulmonary tuberculosis he suffered in May 1953, has been inactive since March 1954. He submitted to surgery in September 1954 and received treatment until discharged on April 27, 1955. A recent report shows he has no physical incapacity. The report of the senior surgeon of the United States Public Health Service, Staten Island, N. Y., dated May 12, 1955, indicated that Public Health Service regulations require on observation period of approximately 2 years after surgery has been performed for pulmonary tuberculosis and recommended that at least 12 or 13 months elapse before this case is again considered.

The Osawatomie State Hospital advised that they have 1,559 patients and only 14 doctors on the staff, and that the loss of 1 member of their staff would make it difficult to give the patients proper care.

Senator Frank Carlson, the author of the bill, has submitted a number of letters and documents in connection with the case, among which are the following:

PERSONAL HISTORY

Name: Yong Whan Kim.
Date of birth: December 26, 1928.
Place of birth: Seoul, Republic of Korea.

*July 1949.*—Graduated from school of medicine, Seoul National University, Seoul, Korea; received the degree of doctor of medicine.

*April 1950.*—Completed a year of straight medical internship at the Seoul University Hospital, Seoul, Korea. Came to the United States of America.

*July 1951.*—Completed a year of rotating internship at the Methodist Hospital of Central Illinois, Peoria, Ill.

*July to December 1951.*—Special student in English at Macalester College, St. Paul, Minn.; graduate assistant in human anatomy and physiology at the Macalester College, St. Paul, Minn.

*January to August 1952.*—Resident physician in general practice at the St. John's Hospital, St. Paul, Minn.

*September 1952.*—Enrolled at the University of Kansas School of Medicine as a junior student.

*May 1953.*—Pulmonary tuberculosis was discovered and hospitalized at the University of Kansas Medical Center and in June transferred to National Jewish Hospital at Denver, Colo.; disease was stabilized in February of 1954.

*April 1954.*—Started regular resident training at National Jewish Hospital, Denver, Colo., in chest diseases.

*April 1955.*—Completed a year of resident training in chest diseases and tuberculosis at National Jewish Hospital, Denver, Colo.

*May 1955.*—Appointed as a staff physician at the Osawatomie State Hospital, Osawatomie, Kans.

Above statements are true and correct in my honor.

YONG WHAN KIM, M. D.

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DEPARTMENT OF JUSTICE IMMIGRATION AND NATURALIZATION SERVICE

No. A–8 998 241
Kansas City, Mo.
Chicago, Ill.

In the matter of Yong Whan Kim or Chai Whan Kim

To: Regional director,
Immigration and Naturalization Service,
Chicago, Ill.

From: Yong Whan Kim.

Subject: Deportation.

PETITION OF ALIEN FOR STAY OF EXECUTION UPON WARRANT

1. Yong Whan Kim respectfully petitions the regional director to exercise the discretion vested in him under Code of Federal Regulations, title 8, section 243.3 (b) and to stay execution upon the deportation warrant ordered herein on October 21, 1955, pending the continued good health of petitioner and until his first eligibility to be classified as a nonquota immigrant.

2. Your petitioner contracted tuberculosis while in the United States pursuing graduate work in medicine as a visitor for business. Subsequent to his recovery from said disease, he applied for a change of status to that of immigrant under the Korean quota. He was ignorant at that time of the 2-year regulation of the Department of Health which made it impossible for him to achieve said status. Petitioner's presence in the United States without legal authorization is a result of illness and not of culpability.

3. According to the NTA diagnostic standards, petitioner's illness has been arrested since February 1954. Subsequent to that time, on September 22, 1954, petitioner underwent chest surgery at the National Jewish Hospital in Denver, Colo., and, as petitioner understands the United States Health Department regulations, the computation of the 2-year period required to pass before he will be eligible for reexamination will not expire until September 22, 1956. On the last date named, therefore, your petitioner will, if in continued good health, be eligible for classification at said time as a nonquota immigrant by reason of his marriage to a United States citizen. (A photostatic copy of petitioner's marriage certificate is attached hereto.)

4. During the remaining months that must pass before his next eligibility to be admitted as stated in paragraph 3 hereof, your petitioner humbly states that he believes his special qualifications will enable him to render valuable and necessary service to the United States by continuing the duties now resting upon him as a member of the medical staff of the Osawatomie State Hospital, Osawatomie, Kans.

5. Affidavits and reports of the following officials and persons are submitted herewith for the Director's consideration:

(1) Director, division of institutional management, State of Kansas, George W. Jackson, M. D.

(2) Superintendent, Osawatomie State Hospital, Wilbur G. Jenkins, M. D.

(3) Clinical director, Osawatomie State Hospital, J. E. C. Morton, M. D.

(4) Robert Terwilliger and Stella Terwilliger; affidavit of support at no expense to the United States in event of petitioner's incapacity.

(5) Harry G. Hemphill, attorney at law, Osawatomie, Kans., character affidavit.

(6) Martin J. FitzPatrick, M. D., chief of section, pulmonary diseases, University of Kansas Medical Center, report concerning petitioner's health.

(7) P. R. Goff, Jr., collections officer, Osawatomie State Hospital, character affidavit.

6. Petitioner's wife, Stella Louise Kim, is attached to the Osawatomie State Hospital staff in her vocation as a registered occupational therapist, and the departure of petitioner from the United States would result in the loss of her services to said hospital by reason of the fact that she is unwilling to be separated from her husband and would, therefore, depart the United States with him.

7. Under all the circumstances, therefore, your petitioner feels that it would be well within a reasonable exercise of the director's discretion to order that the execution upon said deportation warrant be stayed. Your petitioner recognizes that the substantial factors which must weigh heavily in the exercise of such discretion are, at least, that petitioner's health must now be and must continue to be such as not to constitute a danger to the health of others, and that petitioner must remain at the Osawatomie State Hospital where his services are needed.

Therefore, your petitioner humbly requests that the regional director stay execution upon the deportation warrant heretofore ordered pending the continued good health of petitioner and until not later

than September 22, 1956, and upon such terms and conditions as to the director shall seem just and proper.

Respectfully submitted.

YONG WHAN KIM,
THOMAS M. HOWELL,
*His Attorney.*

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LAW OFFICES OF
HOWELL, KNOWLTON & ELLIS
KANSAS CITY, MO., *November 29, 1955.*

Re Yong Whan Kim, proceedings in deportation
Immigration and Naturalization Service, Kansas City and Chicago
File No. A 8998241

Hon. FRANK CARLSON,
*Topeka, Kans.*

DEAR SENATOR CARLSON: I was very much pleased to learn this morning that you have taken an interest in Dr. Kim's matter and have indicated a willingness to introduce a private bill on his behalf. I am forwarding herewith for your information my file copy of the petition recently addressed to the Director of Immigration and Naturalization in Chicago, Ill. This petition sets forth substantially the facts with which I feel you should be acquainted.

The reason for the existence of the present state of circumstances is that Dr. Kim entered the United States in perfect health and, while pursuing graduate studies in medicine, contracted tuberculosis. When he applied for permanent status, he ran directly into a prohibition of the United States Public Health Service. This prohibition was to the effect that no person should be subject to be admitted to the United States who, having suffered the disease of tuberculosis, had not successfully completed a period of 2 years' convalescence from his last surgery. At the time Dr. Kim applied for status change from that of visitor to permanent resident, he was ignorant of the existence of this regulation and, under strict interpretation of the immigration laws and regulations, forfeited his right to be in the United States as a visitor for business, could not qualify for admission, and therefore faces deportation.

At the hearing held in Kansas City it became apparent that under the technicalities of the regulations of the Immigration Service that there was no available legal defense. I therefore petitioned the director to exercise his discretion and to stay execution until such time as Dr. Kim should be eligible for examination again. This would be approximately September 22, 1956.

I talked today with District Director Robert H. Robinson, of the Chicago office. Mr. Robinson assured me that he was conscious of the merit in the case but said that under the policies laid down by the Service it would be impossible for him to grant a stay of execution for this period of time. He did indicate, however, that upon receipt of a communication from me, which was today mailed, that he would grant an extension of time for 60 days.

During this 60-day period, of course, I anticipate attempting again to present Dr. Kim for reexamination. The possibility that I might be successful is, at best, less than remote.

But the delay will make it possible for Dr. Kim to continue his work at the Osawatomie State Hospital until after Congress reconvenes. I trust that by that time it will have been possible for you to proceed with the introduction of a private bill.

I think that Dr. Kim is a very fine young man and will not only make a good citizen but will render extremely valuable service to the people of Kansas.

Thank you again for your interest in him, and in the emergency situation which faces the hospitals. If I can be of any further assistance whatsoever, I hope you will have your secretary so advise me.

Very truly yours,

THOMAS M. HOWELL.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 2883), as amended, should be enacted.

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Calendar No. 1934

84TH CONGRESS, 2d Session } SENATE { REPORT No. 1914

# WILLIAM JEFFREY JONAS

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany S. 2944]

The Committee on the Judiciary, to which was referred the bill (S. 2944) for the relief of William Jeffrey Jonas, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

### AMENDMENT

Strike all after the enacting clause, and insert in lieu thereof, the following:

That, for the purposes of the Immigration and Nationality Act, William Jeffrey Jonas shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act upon payment of the required visa fee.

### PURPOSE OF THE BILL

The purpose of the bill, as amended, is to grant the status of permanent residence in the United States to William Jeffrey Jonas. The bill provides for the payment of the required visa fee. No quota charge is provided for in the bill, since in similar cases where provision is made for the admission of an adopted alien child of United States citizens, he is treated as a nonquota immigrant.

### STATEMENT OF FACTS

The beneficiary of the bill is a 4-year-old native and citizen of Australia who was adopted by United States citizens when he was 7

months old. He entered the United States at the port of Honolulu, T. H., June 18, 1953, with his adoptive parents as a visitor. The father is vice president of the Dickson Tire Co., Jacksonville, Fla., and information is to the effect that he is financially able to adequately care for the child.

A letter, with attached memorandum, dated March 22, 1956, to the chairman of the Senate Committee on the Judiciary from the Commissioner of Immigration and Naturalization Service with reference to the bill reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
*Washington, D. C., March 22, 1956.*

Hon. JAMES O. EASTLAND,
*Chairman, Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

DEAR MR. CHAIRMAN: In response to your request for a report relative to the bill (S. 2944) for the relief of William Jeffrey Jonas, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Jacksonville, Fla., office of this Service which has custody of those files.

The bill would grant the beneficiary the status of a permanent resident of the United States. However, it fails to provide for the payment of a visa fee in his case.

The bill also is intended to confer nonquota status upon the alien child pursuant to sections 101 (a) (27) (A) and 205 of the Immigration and Nationality Act by providing that the child shall be considered the natural-born alien child of United States citizens. The beneficiary would otherwise be chargeable to the quota for Australia.

Sincerely,

——— ———, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE WILLIAM JEFFREY IONAS, BENEFICIARY OF S. 2944

The beneficiary, William Jeffrey Jonas, was born on May 15, 1952, in Sydney, Australia. He is the adopted minor alien child of Leslie Alvin and Mary Ann Jonas, who adopted him on December 16, 1952, in Sydney, Australia. He now resides in Jacksonville, Fla., with his adoptive parents.

The beneficiary entered the United States at the port of Honolulu, T. H., on June 18, 1953, at which time he was accompanied by his adoptive parents. Although he was admitted at that time as a temporary visitor, it was the intention of his adoptive parents that he reside in the United States permanently. The beneficiary thereafter departed from the United States on October 25, 1955, and was readmitted the same day at Niagara Falls, N. Y., as a temporary visitor for a period to expire on April 24, 1956.

The adoptive parents were married on January 8, 1944, in Garden City, N. Y. This is the first marriage for the

adoptive father. However, it is the second marriage for the adoptive mother. Her prior marriage was terminated by annulment on July 16, 1936.

The adoptive father was born on January 23, 1919, in Frankfurt, N. Y. His education terminated after 2 years of college attendance. He served in the United States Army Air Force from March 1941 to March 1946, and in the United States Air Force from December 1950 to October 1953. He attained the rank of captain. Prior to his last period of service in the United States Air Force he was employed as a salesman by the Goodyear Tire & Rubber Co., Ottumwa, Iowa. He is now vice president of the Dickson Tire Co., Jacksonville, Fla. His annual income is $8,800 and his net worth is $46,971.

The adoptive mother was born on May 12, 1919, in Toledo, Ohio. She has a high-school education. She is a housewife and dependent upon her husband for support.

Private bill S. 1807, 83d Congress, introduced in the beneficiary's behalf was not enacted.

A letter dated October 19, 1955, to Senator George Smathers from the Director, Visa Office, United States Department of State, reads as follows:

DEPARTMENT OF STATE,
*Washington, October 19, 1955.*

Hon. GEORGE SMATHERS,
*United States Senate.*

DEAR SENATOR SMATHERS: I have received your communication dated September 16, 1955 (which was acknowledged by telephone on September 20), transmitting the attached letter from Mr. Ralph Roberts, Professional Building, Jacksonville, Fla., concerning the desire of his client, Mr. Leslie A. Jonas, to effect the admission of his adopted child, William Jeffrey Jonas, into the United States for permanent residence.

The regulations relating to the retention of an alien's name on the waiting list have recently been amended whereby an alien who was registered as an intending immigrant at an American consular office abroad and who subsequently enters the United States as a nonimmigrant may retain his original registration priority provided he was not deported from the United States and did not violate his nonimmigrant status while in this country. However, these regulations are not retroactive. In the circumstances, it will be necessary that this child's case be considered in accordance with the regulations previously in effect, which permitted an alien in the United States to register for an immigrant visa or spend his waiting time for such a visa in this country only if his case came within certain specified categories. In as much as the case of the child in question does not come within any of the exempted categories, it is regretted that he is no longer entitled to his original registration priority.

The Attorney General has ruled that the adopted child of an American citizen, regardless of its age at the time of the adoption, is a son or daughter within the meaning of the Immigration and Nationality Act and may therefore be accorded fourth-preference status under the act upon the approval of a petition filed by the adoptive parent with the Immigration and Naturalization Service of the

Department of Justice. As it is assumed that Mr. Jonas is an American citizen, I am enclosing a set of the prescribed petition forms which it is suggested he execute and file with the office of the Immigration and Naturalization Service nearest his place of residence. If the petition is approved by that Service, it will be forwarded to this Department for transmission to the American consular office at which the child intends to apply, presumably the American consulate at Niagara Falls. The consular officer will have no authority to enter the child's name on the waiting list as long as he is in the United States. However, at such time as he departs from the United States and takes up residence in the consular district concerned, he will be granted a priority as of the date the petition was filed with the Immigration and Naturalization Service.

Unfortunately, the Australian quota, to which it is assumed the child is chargeable, is very heavily oversubscribed. Consequently, even as a fourth-preference applicant, he may experience a waiting period of several years before his turn is reached and final action can be taken on his case.

There is enclosed as of possible interest in connection with the foregoing a leaflet which contains the definition of an "eligible orphan" as that term is used in the Refugee Relief Act as well as information regarding the procedure to be followed in sponsoring an orphan's admission into this country. If this child is under 10 years of age and qualifies as an orphan in other respects under the act, it is suggested that the attached forms be executed as expeditiously as possible and returned to the Visa Office of the Department of State. If he is able to qualify for a visa as an orphan he would not be subject to quota restrictions and action on his case could therefore be expedited.

Sincerely yours,

ROLLAND WELCH,
*Director, Visa Office.*

Senator George Smathers, the author of the bill, has submitted a number of letters and documents in connection with the case, among which are the following:

LAW OFFICES OF
RALPH ROBERTS

JACKSONVILLE, FLA., *July 29, 1955.*

Re William Jeffrey Jonas.

Hon. GEORGE SMATHERS,
*United States Senate, Washington, D. C.*

DEAR SENATOR SMATHERS: My clients, Mr. and Mrs. Leslie A. Jonas, adopted William Jeffrey Jonas in Australia in December 1952.

In the spring of 1953, Mr. and Mrs. Jonas, who were then serving overseas with the United States Air Force returned to the United States and brought young Jeffrey into this country on a visitor's visa, good for 1 year.

Senator Lehman, of New York, has attempted to get a bill passed making young Jeffrey a citizen of this country, but has been unsuccessful thus far. At the present time, Mr. Jonas is a resident of Florida and is a partner of Eldon R. Dickson in the Dickson Tire Co.

At the time that young Jeffrey was given a visa to come to this country, there was a waiting period of 3 years to get on the quota for a permanent visa from Australia. As his visitor's visa has now

expired, the immigration department here in Jacksonville had informed Mr. Jonas that he must take immediate steps to obtain a permanent visa from the State Department. I should like for you to obtain, if possible, a permanent visa from the State Department that would be retroactive to his original application for such visa, to wit, 1952. In October of this year, Mr. and Mrs. Jonas are going to New York for a visit and they desire the State Department to issue a visa for young Jeffrey, which would permit their son to come into this country from Canada.

If you would do this, Mr. Jonas will bring young Jeffrey back into this country at Niagara Falls. As you can see, time is an important factor, and I shall greatly appreciate any help that you can give in this matter.

Awaiting advice from you, I remain,

Very truly yours,

RALPH ROBERTS.

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LAW OFFICES OF
RALPH ROBERTS

JACKSONVILLE, FLA., *September 2, 1955.*

Re William Jeffrey Jonas

Hon. GEORGE SMATHERS,
*Senator, United States Senate,*
*Washington, D. C.*

DEAR SENATOR SMATHERS: In response to your letter addressed to this office dated August 18, 1955, I herewith enclose the pertinent information which will be needed in this matter.

First, I should like to mention what my client is desirous of you doing or attempting to do for him at the recommendation of the local immigration officer. Since William Jeffrey Jonas was brought into this country on June 18, 1953, on a visitor's visa, we should like to get him admitted on a permanent-quota visa, and have his application for such a visa dated as of June 1952 on which date Donald W. Smith, American consulate general at Sidney, Australia, wrote Mr. Leslie A. Jonas, informing him that there was a 3-year waiting period to be admitted on a permanent quota visa. The quota at that time was oversubscribed for a period of 3 years.

If you could contact the State Department and ask that William Jeffrey Jonas' application be considered on file since 1952. He would thus be able to come into this country on a permanent-quota visa. The next step would be for the State Department to issue a visa to the American consulate at Niagara Falls, Ontario, Canada, for the use by William Jeffrey Jonas.

Within the next 30 days, Mr. Leslie A. Jonas will take his young son and go to Canada, pick up the visa at Ontario, and re-enter the child into the United States on a permanent visa.

A bill was introduced into Congress by Senator Lehman, of New York, in May 1953, waiving certain provisions allowing this child to come into the United States. The bill passed the Senate but died in the House at the 84th Congress.

I shall be glad to furnish you any additional information which you may need and I shall greatly appreciate any help you can give in this matter.

Awaiting advise from you, I remain,

Respectfully yours,

RALPH ROBERTS.

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DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
*Jacksonville, Fla., August 15, 1955.*

Hon. GEORGE SMATHERS,
*Senate Office Building,*
*Washington, D. C.*

MY DEAR SENATOR SMATHERS: I respectfully acknowledge your letter of August 4, relating to the status of the minor adopted child of Leslie A. Jonas.

Some time recently the writer conferred at length with Mr. Jonas regarding this matter and it was finally concluded that it would be necessary for the child to be issued an immigration visa under the Australian quota, application for which could, of course, be made at any nearby American consulate. In that connection, we advised Mr. Jonas to consult the State Department to ascertain whether or not the child could be regarded as having maintained continuous application for quota visa originally filed with the American consul in Australia about 3 years ago, at which time the child was granted a visitor's visa by reason of the unavailability of a quota document. If the child could be so regarded as a continuing applicant it would appear possible that, after a lapse of 3 years his application could be filled from the current fiscal-year quota for Australia.

We were particularly impressed by the merits of the case and it is obvious that this child, already adopted by a United States citizen, should be made the subject of preferential treatment, in the issuance of a visa, particularly since there is no other provision in the law whereby the matter can be adjusted.

We shall, of course, be only too glad to give any assistance possible and ask that you please feel free to write us again for anything further we may be able to do.

Very truly yours,

W. B. THOMAS,
*Officer in Charge.*

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 2944), as amended, should be enacted.

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Calendar No. 1935

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1915

# MRS. IDA BIFOLCHINI BOSCHETTI

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 1016]

The Committee on the Judiciary, to which was referred the bill (H. R. 1016) for the relief of Mrs. Ida Bifolchini Boschetti, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill, as amended, do pass.

### AMENDMENT

On page two, in line two, strike the words "in excess of 10 per centum thereof".

### PURPOSE

The purpose of the proposed legislation, as amended, is to pay the sum of $2,149.66 to the claimant as death compensation to her as the widow of Marino D. Bifolchini, a veteran of World War II, for the period beginning January 12, 1945, the day following his death, and ending April 14, 1948, the day preceding the date on which a tardy claim filed with the Veterans' Administration by the claimant became effective.

### STATEMENT

The proposed legislation has been considered by a subcommittee which has recommended it favorably.

The records of the Veterans' Administration show that the claimant's husband served in the United States Army from March 8, 1941, until his death in action on January 11, 1945. On March 22, 1945, the Veterans' Administration mailed a letter to the claimant enclosing an

application form for death compensation and giving instructions for its filing.

No claim was filed by the claimant until more than 3 years later, April 15, 1948. The claimant was awarded death compensation, payable monthly, effective as of April 15, 1948, the date of the filing of the application. If the application had been filed within 1 year after the death of the veteran, compensation would have been effective as of the day following the death of the veteran. The claimant appealed from the award, asking retroactive compensation as if the application had been seasonably filed, setting forth that following the news of her husband's death she had been under the care of a physician for nervous shock and was unable to handle her affairs until the spring of 1948. The Board of Veterans' Appeals ruled that since the claim was not filed within 1 year of the veteran's death there was under existing law no authority for the award of compensation prior to the date the claim was received by the Veterans' Administration. The proposed legislation before the committee would award compensation for the period between the death of the veteran and the filing of the application.

The Veterans' Administration calls attention to the fact that an application from the claimant for the payment of national service life-insurance benefits was properly executed during the period of the claimant's illness.

The committee has before it a notarized statement by the claimant's physician, which is printed below, stating that the claimant was under his care from February 20, 1945, for extreme neurasthenia due to her receiving the news that her husband was missing in action, followed by the notice of his death, and that she continued disabled until April 23, 1947.

The committee also has before it a notarized statement, which is printed below, from Mrs. Emma R. Balardini, setting forth that, since the claimant was unable to transact any business, Mrs. Balardini filled out the application for national service life-insurance for the claimant.

The committee is not ordinarily disposed to recommend relief by private legislation where a claimant has failed to qualify under applicable general legislation. Where unusual circumstances exist, however, the committee has from time to time recommended relief in cases similar to that of the claimant here. In the 82d Congress the committee favorably reported S. 858, which became Private Law 557, for the benefit of a claimant who had failed seasonably to perfect a claim for death benefits as the dependent mother of a deceased veteran, for the reason that she persisted in the belief that her son was not dead. The committee, after carefully considering all the facts before it, believes that the present case, where the claimant suffered from such severe and extended nervous shock following the news of her husband's death that she was unable to look after her affairs, involves such unusual circumstances. The committee believes that the proposed legislation is meritorious and recommends it favorably.

In the absence of evidence to show that legal services have been rendered, the bill has been amended so as to eliminate the payment of any attorney's fees.

Attached and made a part of this report are (1) a report, dated February 27, 1952, from the Veterans' Administration on a similar bill in the 82d Congress; (2) a statement from the claimant's physician; and (3) a statement from Mrs. Emma R. Balardini.

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VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
*Washington, D. C., February 27, 1952.*

Hon. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,*
*House of Representatives, Washington, D. C.*

DEAR MR. CELLER: Further reference is made to your letter of February 1, 1952, requesting a report by the Veterans' Administration relative to H. R. 6350, 82d Congress, a bill for the relief of Mrs. Ida Bifolchini, which provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Mrs. Ida Bifolchini, Adams, Massachusetts, the sum of $2,149.66. The payment of such sum shall be in full settlement of all claims of the said Mrs. Ida Bifolchini against the United States for death compensation payable to her as the widow of Marino D. Bifolchini (XC–3860207), a veteran of World War II, for the period beginning January 12, 1945, and ending April 14, 1948. No part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000."

The records disclose that Marino D. Bifolchini (XC–3860207) served in the United States Army from March 8, 1941, until his death in action on January 11, 1945.

After receipt of notice from the Department of the Army of the death of the serviceman, the Veterans' Administration on March 22, 1945, mailed a letter to the widow of the deceased serviceman, Mrs. Ida Bifolchini, 19 Apremont Street, Adams, Mass., expressing regret and giving instructions for the completion of an application form for death compensation, which was enclosed, and its return to the Veterans' Administration. The widow was advised that such benefits were payable in addition to any Government life-insurance benefits to which she might be entitled. There was no response to this letter by the widow, or anyone in her behalf until April 15, 1948, the date of receipt by the Veterans' Administration of an application by Mrs. Bifolchini for death compensation. On May 17, 1948, Mrs. Bifolchini was awarded death compensation at the monthly rate of $60, effective April 15, 1948, the date of filing a claim with the Veterans' Administration. The monthly rate of death compensation was increased to $75 monthly effective September 1, 1948, in accordance with the provisions of the act of July 1, 1948 (Public Law 868, 80th Cong.).

On May 16, 1949, Mrs. Bifolchini appealed from the award of death compensation from April 15, 1948, claiming retroactive death compensation from January 12, 1945, the day following the date of her

husband's death in service. In her appeal, Mrs. Bifolchini stated that she had not received an application form for compensation from the Veterans' Administration, and further upon receipt of news of her husband's death she had become extremely nervous and had been under a doctor's care and did not recover sufficiently to learn of her entitlement to death compensation until the spring of 1948. In denying her appeal, the Board of Veterans' Appeals in a decision rendered August 5, 1949, held that, since an application for death compensation was not submitted by Mrs. Bifolchini within 1 year after date of death of the veteran, there was no authority under existing law for the payment of death compensation to her prior to the date the claim was received in the Veterans' Administration

Under existing laws and regulations, there is no limitation on the time within which application may be made for compensation, but benefits are payable in cases of death arising out of World War II from the day following the date of the veteran's death if the claim is filed within 1 year after the death. If a claim is not filed within such period, death benefits are payable prospectively from the date of application. In view of the fact that the foregoing rules were then for application and the fact that Mrs. Bifolchini's claim was not filed until April 15, 1948, which was more than 1 year after the veteran's death, the award of compensation was properly commenced on such date.

For the information of the committee, it is observed that Mrs. Bifolchini was named the beneficiary of two policies of national-service life insurance totaling $5,000, which are being paid at the total rate of $27.55 per month.

The circumstances in this case have been carefully considered. No reason is apparent why it should be singled out for special legislative treatment by authorizing payment of death compensation from an earlier date than is permitted by general law. As previously indicated, Mrs. Bifolchini has suggested that a retroactive payment should be made because of her extended illness which began immediately following her husband's death in January 1945 and her contention that she did not receive the application for death compensation which accompanied the Veterans' Administration's letter to her of March 22, 1945. It should be noted that the Government is under no legal obligation to furnish such applications on its own initiative. Nevertheless, the records show that in accordance with established practice the explanatory letter of March 22, 1945, with an application enclosed, was sent to Mrs. Bifolchini at the correct mailing address which has remained unchanged. The letter was not returned by the Post Office Department. This address was the same as that on a letter to Mrs. Bifolchini dated March 28, 1945, enclosing an application for payment of national-service life insurance with instructions for its completion and return. The application for payment of insurance was received by Mrs. Bifolchini, and was signed, sworn to, and returned to the Veterans' Administration during the period of her stated illness, being received in the Veterans' Administration on May 14, 1945. To grant legislative relief in this case would be discriminatory against others in the same or similar circumstances, and might form a precedent for similar relief in other cases.

The Veterans' Administration does not believe that private bills of this nature should receive favorable consideration.

Advice has been received from the Bureau of the Budget that there would be no objection to the submission of this report to your committee.

Sincerely yours,

CARL R. GRAY, Jr., *Administrator.*

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*To Whom It May Concern:*

Mrs. Ida Bifolchini was under my care for extreme neurasthenia from February 20, 1945, to April 23, 1947. This was due to the receiving of the news that her husband was missing in action, this being followed by the notice of his death in action on February 20, 1945. She continued disabled until April 23, 1947.

JOSEPH H. CHOQUETTE, M. D.

MAY 5, 1952.

ADAMS, MASS.,
*Berkshire, ss:*

Then personally appeared the above-named Dr. Joseph H. Choquette and acknowledged the above statements to be true. Before me,

[SEAL]

I. AUDREY LOUISON,
*Justice of the Peace.*

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*To Whom It May Concern:*

I, Mrs. Emma Balardini, have witnessed the sickness of Mrs. Ida Bifolchini from February 20, 1945, to April 23, 1947. The death of her husband was a great shock to her all through the period of this time, and she suffered very much. As she was unable to transact any business, I, Mrs. Emma Balardini, filled out the insurance application.

Mrs. EMMA R. BALARDINI.

MARCH 6, 1953.

ADAMS, MASS.,
*Berkshire, ss:*

Then personally appeared the above-named Emma R. Balardini and acknowledged that the above statements made by her are true. Before me,

[SEAL]

I. AUDREY LOUISON,
*Justice of the Peace.*

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Calendar No. 1936

84TH CONGRESS, 2d Session } SENATE { REPORT No. 1916

# MAJ. ROBERT D. LAUER

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 2284]

The Committee on the Judiciary, to which was referred the bill (H. R. 2284) for the relief of Maj. Robert D. Lauer, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

### AMENDMENT

On page 2, lines 2 and 3, strike the words "in excess of 10 per centum thereof".

### PURPOSE

The purpose of the proposed legislation, as amended, is to authorize the Secretary of the Treasury to pay the sum of $3,099.63 to Maj. Robert D. Lauer, of Newport, Ohio, in full settlement of all his claims against the United States for the damages sustained by him due to the destruction of his household goods and personal effects as the result of a crash of a B–29 bomber in Guam on December 17, 1953.

### STATEMENT

Records of the Department of the Air Force disclose that at the time the loss occurred Maj. Lauer was stationed at Anderson Air Force Base, Guam, where he and his family occupied Government quarters. On December 17, 1953, an Air Force B–29 bomber, on an authorized flight, crashed into Major Lauer's Government quarters, destroying his household goods and personal effects and seriously injuring Major Lauer. The claimant filed a claim in the amount of $6,269.87 and later a supplemental claim in the amount of $378.88. The claim was acted upon administratively by the Air Force under the provisions of the Military Personnel Claims Act, (59 Stat. 225), as amended (31 U. S. C. 222c). After careful consideration of all evidence adduced and after applying reasonable depreciation where appropriate, the Department of the Air Force determined that Major Lauer had just and reasonable claims in the total amount of $5,599.63. Thereafter,

on May 25, 1954, the Department of the Air Force paid Major Lauer $2,500, the maximum amount allowable under the Military Personnel Claims Act.

The Department of the Air Force, in reporting on an identical bill of the 83d Congress, stated that Major Lauer has a valid claim of $3,099.63 and does not oppose enactment of legislation to reimburse him for the remaining amount. The Department stated, however, that while it does not take a position in opposition to this legislation to reimburse Major Lauer, it remains steadfast in its preference that matters of this nature should be provided for by general legislation rather than private legislation.

The committee is in agreement with the Department of the Air Force that Major Lauer has a valid claim and that he should be compensated for the damages sustained as a result of the crash of the Air Force bomber.

This committee is of the further opinion that the claimant should be compensated by way of this private legislation rather than penalizing the claimant by forcing him to wait for the enactment of general legislation on the subject by the Congress. The committee, therefore, recommends favorable consideration of H. R. 2284, as amended.

Attached hereto and made a part hereof is a report submitted by the Department of the Air Force on an identical bill of the 83d Congress.

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DEPARTMENT OF THE AIR FORCE,
OFFICE OF THE SECRETARY,
*Washington, August 3, 1954.*

Hon. CHAUNCEY W. REED,
*Chairman, Committee on the Judiciary,*
*House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your request for comments of the Department of the Air Force on H. R. 9527, 83d Congress, a bill for the relief of Maj. Robert D. Lauer.

The bill, if enacted, would direct the payment to Maj. Robert D. Lauer of the sum of $3,099.63 in compensation for his loss due to the destruction of his household goods and personal effects, as the result of the crash of a B–29 bomber in Guam on December 17, 1953. At that time Major Lauer was stationed at Andersen Air Force Base, Guam, where he and his family occupied Government quarters. On December 17, 1953, an Air Force B–29 bomber, on an authorized flight, crashed into Major Lauer's Government quarters, destroying all his household goods and personal effects and seriously injuring Major Lauer. He filed a claim in the amount of $6,269.87 and later a supplemental claim in the amount of $378.88. The claim was acted upon administratively by the Air Force under the provisions of the Military Personnel Claims Act (59 Stat. 225), as amended (31 U. S. C. 222c). After careful consideration of all evidence adduced and after applying reasonable depreciation where appropriate, a determination was made that Major Lauer had just and reasonable claims in the total amount of $5,599.63.

On May 25, 1954, the Department of the Air Force paid Major Lauer $2,500, the maximum amount allowable under the Military Personnel Claims Act.

The Department of the Air Force believes that Major Lauer has a valid remaining claim of $3,099.63 and does not oppose enactment of H. R. 9527, as amended, to provide payment of this lesser amount.

Although the Department of the Air Force does not take a position in opposition to this bill, it remains steadfast in its preference that matters of this nature should be provided for by general legislation rather than private legislation. This recommendation was part of the 1954 Department of Defense legislative program and is now being considered by Congress in H. R. 7068.

The Bureau of the Budget interposes no objection to the submission of this report.

Sincerely yours,

HAROLD E. TALBOTT.

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Calendar No. 1937

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1917

# GRAPHIC ARTS CORPORATION OF OHIO

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 2893]

The Committee on the Judiciary, to which was referred the bill (H. R. 2893) to confer jurisdiction upon the United States Court of Claims to hear, determine, and render judgment upon the claim of Graphic Arts Corporation of Ohio, of Toledo, Ohio, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill, as amended, do pass.

### AMENDMENT

Strike out all after the enacting clause and insert in lieu thereof the following:

That jurisdiction is hereby conferred upon the Court of Claims to hear, determine, and render judgment upon the claim of the Graphic Arts Corporation of Ohio, Toledo, Ohio, as to the liability of the United States, if any, either legal or equitable, for losses alleged to have been sustained by the said Graphic Arts Corporation of Ohio as the result of the performance of a contract, number W33-038ac 2023, dated April 17, 1944, entered into with the United States Army Air Corps.

SEC. 2. Notwithstanding any statute of limitations or lapse of time, suit upon such claim may be instituted by the claimant within one year after the date of the enactment of this Act. Proceedings for the determination of such claim and review thereof, and payment of any judgment thereon, shall be had as in the case of claims over which such court has jurisdiction under section 1491 of title 28 of the United States Code.

SEC. 3. Nothing contained in this Act shall be construed as an inference of liability on the part of the United States Government.

The purpose of the proposed amendment is to clarify the jurisdiction conferred upon the Court of Claims by this legislation.

## PURPOSE

The purpose of the proposed legislation is to confer jurisdiction upon the United States Court of Claims to hear, determine, and enter judgment upon the claim of the Graphic Arts Corporation of Ohio, Toledo, Ohio, as to the liability, if any, either legal or equitable, of the United States.

## STATEMENT

During the early part of 1943 the Army Air Force experienced a severe bottleneck in the reproduction of engineering drawings. This caused the Government to investigate the possibility of reproducing drawings by some other method than blueprint and the Graphic Arts Corp. was contacted by a civilian engineer of the Air Force to see if the claimant corporation could not improve the method of reproducing mechanical drawings. The corporation developed what became known as the Gadi method and it was later awarded a contract for $2 million worth of Gadi prints. This contract was later modified but it is alleged that in the 5 months period from January 1, 1946, to June 1, 1946, the claimant corporation was placed on a standby basis which necessitated the purchase of materials and maintenance operation involving expenditure of $84,359.19. Claimant sought recovery of this amount by filing a claim under the Contract Settlement Act of 1944. This claim was denied administratively and the claimant thereafter sought relief through the medium of private legislation. On two occasions (81st and 83d Congs.) the Congress approved private bills making direct payment to the claimant corporation in the amount of $84,359.19. Both of these bills, however, were vetoed. However, when the President vetoed the legislation during the 83d Congress he specified in his memorandum of disapproval that he would be willing to give approval to a jurisdictional bill waiving the bar of any statute of limitations against the claim. He also stated that although his examination of the claim did not lead him to believe that there was an equitable basis for the claim it was possible that a court might be led to determine otherwise.

The instant legislation would permit the Court of Claims to determine the liability of the United States, if any, in this matter under legal or equitable principles, in accordance with the veto message of the President.

The committee recommends favorable consideration of this legislation. It has twice expressed its approval of this claim on its merits. It is also agreeable to the submission of the claim to a judicial tribunal for final determination of the claim.

Attached to this report is the report of the Department of the Air Force submitted in connection with the legislation in the 83d Congress, the memorandum of disapproval of the President referred to earlier, a memorandum addressed to the Commanding General of the Army Air Force, Washington, D. C. under date of January 13, 1947, signed by 1st Lt. Clement F. Schwanekamp, for John R. Martin, Lieutenant Colonel, Air Corps, Chief, Services Section Procurement Division. Several additional exhibits appear in the House report and need not be reprinted here.

THE WHITE HOUSE OFFICE,
*Lowry Air Force Base, Denver.*

MEMORANDUM OF DISAPPROVAL

I am withholding my approval from S. 2801, for the relief of Graphic Arts Corp. of Ohio.

S. 2801 provides that the Secretary of the Treasury be authorized and directed to pay the sum of $84,359.19 to the Graphic Arts Corp. of Ohio, Toledo, Ohio, in full settlement of all claims of the said Graphic Arts Corp. against the United States. The bill would afford financial relief to the Graphic Arts Corp. for losses alleged to have been incurred in the performance of contract W-33-038 ac-2023 with the Army Air Corps during the period January 1 to June 1, 1946.

It is the contention of the corporation that it was not supplied with the full quantity of work contemplated by the contract during the contract period, and that the contractor was assured by representatives of the Army Air Corps that it would be protected against losses in its operation under the contract. However, it appears that the contractor did accept extensions of time and other amendments to the original contract under various change orders and supplements pertinent thereto by executing said documents. It is reported that payments totaling $2,029,185.29 were made to the contractor.

Insofar as furnishing work under the contract was concerned, it appears that there was substantial compliance by the Government within the contract period as extended.

There is an established rule that a formal written contract entered into on the basis of negotiations between the parties merges all such previous negotiations and is presumed in law to express the final understanding of the parties. Contract W-33-038 ac-2023, as amended, was entered into on a fixed-price basis. It contained no provision for payment of additional compensation merely because the contractor might suffer a loss in performance. Hence, while the contractor's claim is based primarily upon the premise that certain representations were made by Government officers at the time the contract was negotiated, to the effect that the Government would protect the contractor from any loss in performance, the terms of the contract relating to the work to be performed and to the prices to be paid therefor were clear and unambiguous and such extraneous representations, even if established, legally could not be resorted to for the purpose of imposing an additional obligation on the Government. If the contractor felt that the formal contract and change orders and extensions, etc., did not afford it sufficient protection against losses in performance, it should not have signed the contract and accepted the extensions. Having done so, it seems clear that there is no liability for any further payment to the contractor, based upon the contract provisions.

Government audit of the contractor's records indicates that this corporation, although claiming a loss of $67,952.31 in the operation of the Gadi Division for the 5-month period beginning January 1, 1946, actually sustained a loss of only $46,213.94 during that period. Of this amount, the audit report shows only $29,432.29 was applicable to Army Air Corps contract W-33-038 ac-2023. Despite this loss of $23,432.29 on this contract for the first 5 months of 1946, the contractor actually earned a profit of $34,202.86 on the entire contract. The audit report also discloses that this contractor earned a profit of $392,329.15 on all other Government business for the years 1944, 1945, and the first 5 months of 1946. Its commercial business during the same period also operated at a substantial profit.

My approval of this bill would establish the undesirable principle of Government underwriting any wartime losses incurred by contractors providing goods and services to the Government, regardless of the fact that such contractors did not sustain a net loss. I am unable to perceive any circumstances which would warrant preferential treatment for the claimant to the detriment of other wartime contractors. I am satisfied that it is my duty to oppose this bill.

Although my examination of the record in this case does not lead me to believe that there is an equitable basis for this claim, it is possible that a court through judicial processes might be led to determine otherwise. In complex situations like this one, it is my opinion that judicial rather than legislative remedy should be sought. I would, therefore, be willing to give my approval to a jurisdictional bill waiving the bar of any statute of limitations against the claim.

DWIGHT D. EISENHOWER.

THE WHITE HOUSE, *August 31, 1954.*

DEPARTMENT OF THE AIR FORCE,
OFFICE OF THE SECRETARY,
*Washington, April 5, 1954.*

Hon. WILLIAM LANGER,
*Chairman, Committee on the Judiciary,*
*United States Senate.*

DEAR MR. CHAIRMAN: Reference is made to your request for the Department of the Air Force views with respect to S. 2801, 83d Congress, a bill for the relief of Graphic Arts Corp. of Ohio.

This bill proposes that the Secretary of the Treasury be authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the Graphic Arts Corp. of Ohio the sum of $84,359.19 in full settlement of all claims of said corporation against the United States. This purported claim arises out of contract No. W-33-038 ac-2023. Of this sum, $67,952.31 represents compensation of the Gadi process plant of said corporation during the period beginning Jan. 1, 1946, and ending June 1, 1946, and $16,406.88 represents expenditures by said corporation for special materials, which were useless to it when the contract under which it was furnishing services to the Government expired.

This corporation submitted a claim to the General Accounting Office under the date of June 20, 1947, based on the same facts that it advanced later in support of H. R. 4832, 81st Congress. The Comptroller General held, at that time, that there was no authority for the allowance of any part of the amount claimed.

On January 28, 1944, the Air Force entered into a letter contract with this corporation for 163,200,000 square feet of Gadi reproductions. This letter contract was superseded by a definitive fixed-price contract No. W-33-038 ac-2023, dated April 17, 1944, which was converted to a call contract on March 1, 1945. The corporation completed this contract in the latter part of May 1946, and received a total payment of $2,029,185.29.

The claim of the corporation is based on the contention that the contractor was not supplied with the full quantity of work contemplated by the contract during the contract period, and that the contractor was assured by representatives of the Army Air Corps that it would be protected against losses in its operation under the contract. It appears, however, that contractor did accept extensions of time and other amendments to the original contract under various change orders and supplements pertinent thereto by executing said documents.

Thus, insofar as furnishing work under the contract was concerned, it appears that there was substantial compliance by the Army Air Corps within the contract period as extended.

It is a well-known rule that a formal written contract entered into on the basis of negotiations between the parties merges all such previous negotiations and is presumed in law to express the final understanding of the parties. Contract W-33-038 ac-2023, as amended, was entered into on a fixed-price basis. It contained no provision for payment of additional compensation merely because the contractor might suffer a loss in performance. Hence, while the contractor's claim is based primarily upon the premise that certain representations were made by Army Air Corps officers at the time the contract was negotiated, to the effect that the Government would protect the contractor from any loss in performance, the terms of the contract relating to the work to be performed and to the prices to be paid therefor were clear and unambiguous and such extraneous representations, even if established, legally could not be resorted to for the purpose of imposing an additional obligation on the Government.

The Air Force audit of the contractor's records indicates that this corporation, although claiming a loss of $67,952.31 in the operation of the Gadi division for the 5 months' period beginning January 1, 1946, actually sustained a loss of only $46,213.94. Of this amount, the audit report shows that the sum of $9,711.32 was applicable to commercial business, $7,070.33 was applicable to other Government business, and only $29,432.29 was applicable to Army Air Corps contract W-33-038 ac-2023. Despite this loss of $29,432.29 on this contract for the first 5 months of 1946, the contractor actually earned a profit of $34,202.86 on the entire contract. The audit report also discloses that this contractor earned a profit of $392,329.15 on all other Government business for the years 1944, 1945, and the first 5 months of 1946.

If this bill should be favorably considered and enacted, it would establish the undesirable principle of Government insurance against any wartime losses incurred by contractors providing goods and services to the Government, regardless of the fact that such contractors would not sustain a net loss.

In view of the above, the Air Force cannot recommend payment of any sum to the Graphic Arts Corp. of Ohio, and, therefore opposes enactment of S. 2801 for the relief of this corporation.

This report is submitted without the advice of the Bureau of the Budget pursuant to a request from Mr. Ruddy of your staff.

Sincerely yours,

JAMES H. DOUGLAS,
*Under Secretary.*

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HEADQUARTERS, AIR MATERIEL COMMAND,
*Wright Field, Dayton, Ohio, January 13, 1947.*

Subject: Claims of Graphic Arts Corp., $89,782.

To: Commanding general, Army Air Forces, Washington 25, D. C.; attention, Chief, Readjustment and Procurement Division, OAC/AS–4.

1. The attached Graphic Arts letters, dated July 18, 19, 1946, addressed to the General Accounting Office, were presented to this command with the verbal request that they be reviewed and forwarded with the contracting officer's findings and recommendations. On October 21, 1946, claimant requested that the claims be given consideration under section 17 of the Contract Settlement Act of 1944. After due investigation, it has been concluded that no part of the claims can properly be paid under that, or any other, legislation by the War Department but that claimant is equitably entitled to payment and that the War Department should recommend that the Comptroller General consider the claims for action under Public Law 247, 70th Congress (H. R. 958), the act of April 10, 1928. if it be a determined that they may not otherwise lawfully be paid. A copy of this act is attached hereto for ready reference.

2. The claims request payment for the following:

(*a*) Materials purchased for use on contract No. W33–038 ac–2023, which were left over on expiration of the contract and which cannot be used in claimant's other business activities, $22,189.69.

(*b*) Gadi plant operating losses incurred during the first 5 months of 1946, $67,952.31.

3. The facts involved in the claim are as follows:

(*a*) During the first part of 1943 a severe and serious bottleneck occurred in the reproduction of engineering drawings for the Army Air Forces which resulted in the investigation of possible methods of reproduction other than blueprinting. In connection with this investigation, Mr. H. H. Southgate, civilian employee of Wright Field, in July 1943, contacted the Graphic Arts Corp. of Ohio, lithographers, claimant herein, and informed it that a faster and better method of reproducing mechanical drawings was desired by the Army Air Forces. At this time it was not believed that claimant would succeed in developing such a process and it was stressed that any research and development costs incurred on the project would have to be borne by claimant.

(*b*) As a result of the above requests and information, claimant undertook and developed the so-called Gadi method of reproduction which was not only better and faster but also cheaper than blueprinting for large lot reproductions. This method was demonstrated to, and approved by, various personnel of the Air Service and the Air Materiel Command in November 1943. At that time reproduction was being done by 17 or more blueprint contractors and by a blueprinting plant run by the Air Service Command. Claimant offered to turn over its Gadi process to the Army without charge in the expectation that it would be used in the Air Service Command plant. This was determined to be not practical and claimant was therefore requested to set up a plant for Gadi reproduction. Claimant pointed out that it was not in a position to finance such a large undertaking but was assured that Government financial assistance would be forthcoming in the form of a Government-furnished building and Government-furnished machinery and equipment. Claimant was later informed that the building could not be furnished but, on the basis of assurances of permission to apply a high amortization rate, contractor in January 1944 accepted a letter contract for $2,000,000 worth of Gadi prints, purchased and refurnished a building at a cost in excess of $300,000, received Government assistance in purchasing machinery and equipment in the amount of $148,839.85 and commenced operations. The letter contract was superseded in April 1944 by formal Contract No. W33–038 ac-2023, which called for 163,200,000 square feet of Gadi prints at a total cost of $1,995,222 to be completed by July 31, 1944. A summary of this contract is attached hereto as enclosure No. 8.

(c) By Change Orders Nos. 1 to 4, inclusive, the completion date of Contract No. W33-038 ac-2023 was extended to February 8, 1945. On December 6, 1944 certain Army personnel who were responsible for providing claimant with drawings for reproduction requested termination of the contract on the theory that the contract was an undesirable obligation of the Government. As a result, an impartial investigation was conducted which led to the conclusion that Army personnel had contributed materially to claimant's reduced performance. On December 18, 1944, therefore, it was determined that the contract would not be terminated at that time, but that it would be extended and modified, and that every effort woud be made to find work for claimant in order to "whittle down" the Government's liability under the contract.

(d) On March 1, 1945, supplemental agreement No. 5 amended the contract to render callable two additional types of work, the original obligation of the Government under item No. 1 was amended to be furnished "as and when" called for by the contracting officer, and the period of performance was extended to June 30, 1945. By supplemental agreements Nos. 10 and 15 and Change Order No. 17, the call period of the contract was further extended to March 31, 1946, and work was performed under the contract until May 1946. During this period of time up to final expiration of the contract, nine additional callable items were added to the contract and two minor claims for packaging costs and for services in arranging Vandykes in numerical sequence were paid under authority of section 17 of the Contract Settlement Act of 1944. However, only $42,769.58 in funds were added to the contract over its life and only $2,029,185.29 in payments were made thereunder.

(e) During 1944 claimant made a profit on the Gadi operation of $25,500. In 1945 it lost $133,958.71 and in the first 5 months of 1946 it allegedly lost $67,592.31. Despite the large loss in 1945, claimant does not seek reimbursement thereof because of its overall profit position whereunder it would have to refund all or practically all of any recovery made on losses for that year.

(f) Claimant believes that it is deserving of reimbursement of its losses on its Gadi plant during the first 5 months of 1946 including its excess Gadi supply inventory. This command agrees with claimant that it would be equitable to reimburse claimant for its losses but that the inventory should be taken over only in the event and to the extent necessary to prevent additional loss. The reasons for this command's belief that the losses should be reimbursed are as follows:

(1) Claimant was requested by Army personnel to set up a plant to make Gadi prints, was assured of adequate financial assistance and was informed of tremendous volumes of work which would be involved. Claimant would never have entered the project without such assurances. It operated at capacity or near capacity only during the year 1944 although it was definitely led to believe that it would receive orders for near-capacity production throughout the war.

(2) Claimant developed an excellent method of reproduction of mechanical drawings which is the method which would be used almost exclusively in the event of another war although it is not practical for the very small quantity reproduction required in peacetime.

(3) Claimant was assured at the times of the extensions of its contract that it would receive much more work in the future and that, therefore, it could safely accept the extensions.

(4) Claimant saved the Government considerable money, amouting, it is believed, to approximately $2,000,000 in reproduction and handling costs.

(5) Claimant's losses were not caused by its own inefficiency or unduly high costs but by its having fixed its prices at too low rates because of continued assurances that it would receive orders for work of a type and in quantities sufficient at least to prevent losses.

3. Claimant's statements of its claims have been verified except as to the various statements relating to its profits, losses, costs, etc., the verification of which would require an audit. Statements from numerous War Department personnel who were involved in the transaction have been obtained and are attached hereto.

4. This command has not initiated an audit of claimant's losses on its Gadi plant during 1946, for which payment is recommended, pending receipt of advice from higher authority as to whether the recommendation of this command will be adopted by the War Department. In the absence of the recommendation of a definite amount, no funds have been allocated in any reserve account for the payment of this claim.

5. It is requested that claimant be advised either directly, or through this headquarters, of the disposition of its claim.

6. Forwarded herewith is a special file on this case consisting of the following:

Enclosure 1—Copy of claimant's letter, dated July 18, 1946.
Enclosure 2—Copy of claimant's letter, dated July 19, 1946.
Enclosure 3—Copy of claimant's letter, dated October 21, 1946.
Enclosure 4—Copy of claimant's letter, dated October 21, 1946.
Enclosure 5—Copy of claimant's letter, dated October 23, 1946.
Enclosure 6—Copy of claimant's letter, dated October 28, 1946.
Enclosure 7—Copy of act of June 10, 1928.
Enclosure 8—Summary of Contract No. W33-038 ac-2023.
Enclosure 9—Copy of Mr. Southgate's letter, dated October 22, 1946.
Enclosure 10—Copy of R & R, HQ, AMC, comments 1-5, dated July 23 to September 11, 1946, containing statements of Edward J. Gujer and Maj. A. C. Adman.
Enclosure 11—Copy of contracting officer's letter to Mr. Lawrence Glynn, dated September 4, 1946, and reply dated September 25, 1946.
Enclosure 12—Copy of contracting officer's letter to Mr. Edmond J. Taylor, dated September 6, 1946 and reply dated November 5, 1946.
Enclosure 13—Copy of contracting officer's letter dated September 4, 1946 to Mr. Ray Hawkey and reply dated September 25, 1946.
Enclosure 14—File of miscellaneous pertinent correspondence and documents (copies).

For the Commanding General:

CLEMENT F. SCHWANEKAMP,
*First Lieutenant Air Corps*
(For John R. Martin, Lieutenant Colonel, Air Corps,
Chief, Services Section Procurement Division).

(14 exclusive as stated above.)

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Calendar No. 1938

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1918

# MAJ. ORIN A. FAYLE

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 2904]

The Committee on the Judiciary, to which was referred the bill (H. R. 2904) for the relief of Major Orin A. Fayle, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

### AMENDMENT

On page 2, lines 3 and 4, strike the words "in excess of 10 per centum thereof".

### PURPOSE

The purpose of the proposed legislation, as amended, is to pay Maj. Orin A. Fayle the sum of $612.22 for damages sustained by him on account of damage to, and destruction of, his household goods which were being shipped from Naples, Italy, to Washington, D. C., when he was transferred, approximately June 19, 1954, from being attached to CINCSOUTH, NATO, for which he has not been compensated.

### STATEMENT

This legislation is recommended for favorable consideration by the Department of the Army, in the sum as set forth in the bill, and its report is hereto attached and made a part of this report.

Records of the Department of the Army show that Orin A. Fayle was born at Beebe River, N. H., on March 17, 1920; that he served as an enlisted man in the Army of the United States during the period of January 22, 1942, until September 29, 1942, when he was honorably discharged to accept a commission; that he was appointed a second lieutenant, Army of the United States, on September 30, 1942, and was assigned Army service number O1104146; that thereafter he remained on continuous active duty, advancing in grade until he attained the rank of major, on September 15, 1952, while he was

assigned to duty with the United States Army Element, Allied Forces, Southern Europe, at Naples, Italy.

On June 8, 1954, Major Fayle received orders transferring him from Naples, Italy, to the Office of the Chief of Engineers, Washington, D. C. Pursuant to these orders, which provided also for the concurrent travel of his wife and two minor sons and shipment of household goods and personal effects to authorized Government personnel at Naples, Italy, for shipment to Washington, D. C. The property was shipped on the steamship *Robinson* to the New York port of embarkation and, by bill of lading dated August 19, 1954, the property was forwarded to Cameron Station, Alexandria, Va., by covered trailer on August 23, 1954, arriving thereat on the following day. It was delivered to the home of Major Fayle in Washington, D. C., on or about August 25, 1954. Immediately upon its arrival, the containers were opened, and it was found that the household goods, clothing, and other personal property contained therein were badly mildewed and severely damaged.

On August 30, 1954, Major Fayle filed a claim with the Department of the Army, in the amount of $4,824, for the loss sustained by him on account of the damage caused to some 109 items of his personal property while the same were in the official custody of the United States Army authorities. After a careful investigation and consideration of all the evidence in this case, and after applying established principles regarding depreciation of the property, it was determined that the total damage caused to the household goods and other personal property of Major Fayle, while the same were in the official custody of the United States Government, amounted to the sum of $3,112.22. No part of this damage was covered by insurance. All of the property, for the damage to which this claim was filed, was reasonable, useful, necessary, and proper for the claimant to have owned and had in his possession as a major in the Army of the United States assigned to an overseas station with authorized dependents. Further, it appears that Major Fayle exercised every reasonable precaution to protect his household goods and personal effects while they were being shipped to his home in the United States.

The Secretary of the Army states in his report dated March 17, 1955, that:

> The only statute under which the claim of Major Fayle could be considered by the Department of the Army was the Military Personnel Claims Act of 1945 (59 Stat. 225; 31 U. S. C. 222c), as amended. However, the act of July 3, 1952 (Public Law 439, 82d Cong.; 66 Stat. 322), which amended this act, provides, among other things, that the amount which may be paid under such statute in any one case shall be limited to a sum "not in excess of $2,500." Prior to the enactment of the last-cited act there was no limitation with respect to the amount that might be paid by the Department of the Army to a claimant under the Military Personnel Claims Act of 1945 for damages on account of the loss of his personal property. In view of the limitation contained in the act of July 3, 1952, supra, the maximum amount in which Major Fayle's claim could be paid by the Department of the Army was the sum of $2,500. The claim of Major Fayle, therefore, was duly allowed in the sum of $2,500 on October 12, 1954, and a check in that amount has been sent to him. After the making of said payment there remains a balance of damages sustained by the claimant in the sum of $612.22, for which he has not been compensated. There is no method by which he may be reimbursed for this loss except through the enactment by the Congress of a private relief bill such as H. R. 2904.

After study, the committee concurs in the action of the House and recommends H. R. 2904, as amended, to the favorable consideration of the Senate.

DEPARTMENT OF THE ARMY,
*Washington 25, D. C., March 17, 1955.*

Hon. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,*
*House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your letter enclosing a copy of H. R. 2904, 84th Congress, a bill for the relief of Maj. Orin A. Fayle, and requesting a report on the merits of the bill.

This bill provides as follows: "That the Secretary of the Treasury be and he is hereby authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Major Orin A. Fayle, of 4433 Yuma Street, Northwest Washington, District of Columbia, the sum of $2,324, in full settlement of all claims against the United States for the damages sustained by him on account of damage to and destruction of his household goods which were being shipped from Naples, Italy, where he had been quartered until approximately June 19, 1954, attached to CINCSOUTH, NATO, for which he has not heretofore been compensated."

Records of the Department of the Army show that Orin A. Fayle was born at Beebe River, N. H., on March 17, 1920; that he served as an enlisted man in the Army of the United States during the period of January 22, 1942, until September 29, 1942, when he was honorably discharged to accept a commission; that he was appointed a second lieutenant, Army of the United States, on September 30, 1942, and was assigned Army service number O1104146; that thereafter he remained on continuous active duty, advancing in grade until he attained the rank of major, on September 15, 1952, while he was assigned to duty with the United States Army Element, Allied Forces, Southern Europe, at Naples, Italy.

On June 8, 1954, Major Fayle received orders transferring him from Naples, Italy, to the Office of the Chief of Engineers, Washington, D. C. Pursuant to these orders, which provided also for the concurrent travel of his wife and two minor sons and shipment of household goods at Government expense, Major Fayle, on or about June 19, 1954, delivered his household goods and personal effects to authorized Government personnel at Naples, Italy, for shipment to Washington, D. C. The property was shipped on the steamship *Robinson* to the New York port of embarkation and, by bill of lading dated August 19, 1954, the property was forwarded to Cameron Station, Alexandria, Va., by covered trailer on August 23, 1954, arriving thereat on the following day. It was delivered to the home of Major Fayle in Washington, D. C., on or about August 25, 1954. Immediately upon its arrival, the containers were opened, and it was found that the household goods, clothing, and other personal property contained therein were badly mildewed and severely damaged.

On August 30, 1954, Major Fayle filed a claim with the Department of the Army, in the amount of $4,824, for the loss sustained by him on account of the damage caused to some 109 items of his personal property while the same were in the official custody of the United States Army authorities. After a careful investigation and consideration of all the evidence in this case, and after applying established principles regarding depreciation of the property, it was determined that the total damage caused to the household goods and other personal property of Major Fayle, while the same were in the official custody of the United States Government, amounted to the sum of $3,112.22. No part of this damage was covered by insurance. All of the property, for the damage to which this claim was filed, was reasonable, useful, necessary, and proper for the claimant to have owned and had in his possession as a major in the Army of the United States assigned to an overseas station with authorized dependents. Further, it appears that Major Fayle exercised every reasonable precaution to protect his household goods and personal effects while they were being shipped to his home in the United States.

The only statute under which the claim of Major Fayle could be considered by the Department of the Army was the Military Personnel Claims Act of 1945 (59 Stat. 225; 31 U. S. C. 222c), as amended. However, the act of July 3, 1952 (Public Law 439, 82d Cong.; 66 Stat. 322), which amended this act, provides, among other things, that the amount which may be paid under such statute in any one case shall be limited to a sum "not in excess of $2,500." Prior to the enactment of the last-cited act there was no limitation with respect to the amount that might be paid by the Department of the Army to a claimant under the Military Personnel Claims Act of 1945 for damages on account of the loss of his personal property. In view of the limitation contained in the act of July 3, 1952, supra, the maximum amount in which Major Fayle's claim could be paid by the Depart-

ment of the Army was the sum of $2,500. The claim of Major Fayle, therefore, was duly allowed in the sum of $2,500 on October 12, 1954, and a check in that amount has been sent to him. After the making of said payment there remains a balance of damages sustained by the claimant in the sum of $612.22, for which he has not been compensated. There is no method by which he may be reimbursed for this loss except through the enactment by the Congress of a private relief bill such as H. R. 2904.

However, this bill in its present form would pay to Major Fayle the sum of $2,324. Apparently this figure was arrived at by deducting the sum of $2,500 which had been paid to Major Fayle under the provisions of the Military Personnel Claims Act of 1945 from $4,824, the total amount of damages claimed. As has been noted previously, this claim was considered carefully within the Department of the Army, not only to resolve the issue of liability on the part of the United States, but also, according to prescribed administrative procedures, to determine the amount of loss actually sustained by the claimant. As a result of this consideration it was determined, after applying recognized principles of depreciation to the cost or value of the property at the time of acquisition, that the actual loss sustained amounted to the sum of $3,112.22. Therefore, the loss for which Major Fayle has not heretofore been reimbursed amounts to the sum of $612.22, and not the sum of $2,324 as stated in H. R. 2904. To pay to Major Fayle any amount in excess of the sum of $612.22 would be contrary to all accepted methods of ascertaining measure of loss and, in effect, would enable him to obtain reimbursement in an amount greater than his actual loss. Further, such payment would be discriminatory and contrary to principles of fairness and justice in that it would grant to this claimant a special benefit not accorded to innumerable others whose losses have been ascertained according to accepted principles of depreciation.

Major Fayle has had in excess of 12 years of continuous, honorable, active service as a commissioned officer in the Army of the United States. It would be a rather severe hardship for him to bear the remainder of this loss for which he has not been compensated, which was caused solely by an instrumentality of the United States. It is the view of the Department of the Army that, under the facts and circumstances of this case, Major Fayle is justly and equitably entitled to recover the full amount of damages sustained by him. This Department accordingly, recommends the favorable consideration of H. R. 2904 provided that it be amended to grant an award to the claimant in the amount of $612.22.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

ROBERT T. STEVENS,
*Secretary of the Army.*

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DEPARTMENT OF THE ARMY,
OFFICE OF THE CHIEF OF ENGINEERS,
*Washington, March 18, 1955.*

Mr. WALTER LEE,
*House Office Building, Washington, D. C.*

DEAR MR. LEE: The following statement and attached list of personal property losses is forwarded for your information:

"STATEMENT

"On or about June 19, 1954, my household personal effects were delivered to authorized Government personnel at Naples, Italy, for shipment to Washington, D. C., pursuant to competent orders. On or about August 25, 1954, my household/personal effects were delivered to my residence at 4433 Yuma Street NW., Washington, D. C., and upon inspection were found to have been damaged or destroyed to the extent of over $4,800, of which I received $2,500 from the Department of the Army, which is the maximum amount payable under existing regulations. I have attached copies of my orders, a list of each item damaged or destroyed with the original and estimated cost.

"Sincerely yours,

"ORIN A. FAYLE,
"*Major, Corps of Engineers,*
"*Chief, Security and Foreign Relations Branch,*
"*Engineer Intelligence Division.*"

*Personal clothing and miscellaneous items damaged beyond repair*

| Quantity and description of article | Month and year of acquisition | Purchase price | Value when destroyed |
|---|---|---|---|
| 1 cotton dress (green and white) | 1952 | $15 | $8 |
| 1 cotton embroidered dress | 1952 | 25 | 15 |
| 2 evening petticoats (white) | 1953 | 10 | 8 |
| 1 flower cotton dress | 1953 | 20 | 12 |
| 1 white silk-brocade evening gown | 1951 | 65 | 50 |
| 1 white and black pure-silk evening gown | 1951 | 80 | 65 |
| 1 Chinese brocade jacket | 1950 | 50 | 35 |
| 3 yards pure silk pique | 1949 | 18 | 18 |
| 5 yards white silk shantung | 1949 | 25 | 25 |
| 7 yards white silk | 1949 | 35 | 35 |
| 1 white silk evening gown | 1950 | 140 | 100 |
| 1 2-piece green brocade evening gown | 1953 | 70 | 50 |
| 1 blue satin evening gown | 1952 | 90 | 65 |
| 1 blue short skirt | 1951 | 15 | 10 |
| 1 silk negligee | 1950 | 35 | 25 |
| 1 2-piece blue dress | 1953 | 35 | 35 |
| 1 white fur cape, squirrel (Petit Gris) | 1950 | 300 | 250 |
| 1 Japanese kimono | 1950 | 60 | 35 |
| 2 yards white silk | 1949 | 10 | 10 |
| 2 blouses, French lace | 1953 | 60 | 60 |
| 1 red and black cloth coat | 1952 | 80 | 60 |
| 1 long fur coat (Otarie) | 1949 | 800 | 500 |
| 1 taffeta skirt | 1953 | 25 | 20 |
| 1 cotton dress | 1952 | 20 | 8 |
| 1 black wool dress | 1953 | 40 | 35 |
| 1 white suit jacket | 1952 | 65 | 45 |
| 1 white pure-silk dress | 1953 | 45 | 35 |
| 1 shantung dress | 1953 | 35 | 20 |
| 1 silk bed jacket | 1952 | 20 | 20 |
| 1 black Chinese dress | 1950 | 70 | 50 |
| 1 white sharkskin suit | 1952 | 90 | 75 |
| 1 silk-pique blouse | 1953 | 15 | 10 |
| 1 silk embroidered blouse | 1950 | 30 | 15 |
| 3 hats | 1952–53 | 18 | 15 |
| 4 yards silk muslin | 1949 | 32 | 32 |
| 2 nylon petticoats | 1953 | 14 | 14 |
| 1 yellow sweater | 1953 | 5 | 2 |
| 1 corduroy jacket | 1952 | 20 | 10 |
| 1 shorts | 1952 | 2 | 1 |
| 1 scarf | 1952 | 3 | 1 |
| 2 yards green silk | 1949 | 12 | 12 |
| 1 red plaid wool dress | 1952 | 35 | 25 |
| 1 black taffeta dress | 1952 | 25 | 15 |
| 4 brassieres (nylon) | 1952 | 12 | 6 |
| 2 garter belts (nylon) | 1953 | 12 | 8 |
| 1 wool slacks | 1953 | 25 | 18 |
| 1 velvet halter (evening) | 1953 | 15 | 10 |
| 1 red pedalpushers | 1952 | 10 | 5 |
| 1 gray nylon skirt | 1953 | 15 | 10 |
| 7 lace centerpieces | 1952 | 20 | 12 |
| 1 Chinese luncheon set (new not used) | 1949 | 60 | 60 |
| 1 Chinese luncheon set (8) | 1949 | 80 | 80 |
| 1 tablecloth (hand-embroidered) | 1949 | 50 | 50 |
| 1 dinner set (12) | 1949 | 140 | 140 |
| 16 hand-embroidered centerpieces | 1949 | 32 | 20 |
| 1 Chinese tea set | 1949 | 35 | 30 |
| 1 Chinese luncheon set (8) | 1949 | 90 | 90 |
| 2 large centerpieces | 1949 | 25 | 15 |
| 1 embroidered bedcover | 1954 | 100 | 100 |
| 1 embroidered curtain | 1954 | 35 | 35 |
| 3 tablecloths | 1954 | 20 | 20 |
| 1 pair red and white shoes | 1952 | 15 | 8 |
| 1 pair black suede shoes | 1952 | 18 | 10 |
| 1 pair white shoes | 1953 | 25 | 15 |
| 1 pair white shoes | 1952 | 12 | 4 |
| 2 bedsheets | 1953 | 6 | 3 |
| 4 pillowcases | 1953 | 4 | 2 |
| 1 Chinese embroidered jewelry box | 1949 | 15 | 9 |
| 1 wool skirt | 1952 | 8 | 3 |
| 2 purses, new | 1953 | 15 | 15 |
| 1 cocktail nylon dress | 1952 | 70 | 55 |
| 1 nylon evening dress | 1953 | 120 | 100 |
| 1 suit (gray) | 1954 | 125 | 125 |
| 1 cocktail dress (white and gold nylon) | 1953 | 70 | 60 |
| 1 black and blue cocktail dress | 1954 | 30 | 30 |
| 1 nylon evening petticoat | 1953 | 8 | 8 |
| 3 Chinese centerpieces | 1949 | 24 | 8 |
| Total | | 4,000 | 3,095 |

*Furniture damaged (repairable)*

| Quantity and description of article | Month and year of acquisition | Purchase price | Cost of repairs |
|---|---|---|---|
| 1 sofa (sectional) | May 1952 | $300 | $135 |
| 1 sectional chair | do | 150 | 110 |
| Do | do | 150 | 110 |
| 1 Chinese inlaid coffee table (teakwood) (antique) | April 1949 | 125 | 35 |
| 2 Chinese end tables (rosewood) (antique) | do | 110 | 28 |
| 1 Chinese cocktail table (rosewood) (antique) | do | 150 | 16 |
| 1 Chinese antique 4-panel inlaid mother-of-pearl and ivory | do | 700 | 30 |
| 1 brass lamp and shade | February 1950 | 45 | 14 |
| 1 dining-room table (maple) and 4 dining-room chairs | May 1952 | 140 | 60 |
| 1 Chinese antique hand-carved teakwood desk | July 1949 | 500 | 80 |
| 1 Chinese dining-room side chest (antique) | do | 40 | 19 |
| 1 ornate Chinese cabinet (teakwood) (antique) | do | 200 | 85 |
| 1 serving tray, Chinese (rosewood) (antique) (mother-of-pearl) | June 1948 | 35 | 6 |
| 1 Chinese antique large end table (rosewood) | 1949 | 65 | 18 |
| 1 Chinese antique hand-carved library table | September 1949 | 175 | 35 |
| 1 brass table lamp and shade | May 1952 | 35 | 14 |
| Total | | 2,920 | 795 |

*Furniture damaged (not repairable; no salvage value)*

| Quantity and description of article | Month and year of acquisition | Purchase price | Value when destroyed |
|---|---|---|---|
| 1 bamboo chair, blond webbing | April 1954 | $13 | $13 |
| 1 bamboo chair, green webbing | do | 13 | 13 |
| 1 handwoven copa chair, Turkish | June 1954 | 25 | 25 |
| 1 handwoven copa chair, Turkish | do | 25 | 25 |
| 1 rattan chair | March 1953 | 10 | 10 |
| 1 rattan chair | do | 10 | 10 |
| 1 400-day clock | May 1954 | 20 | 20 |
| 1 rug, oriental, 11 by 15 feet | 1948 | 1,000 | 700 |
| Total | | 1,116 | 816 |

HEADQUARTERS, US ARMY ELEMENT, AFSE

Detachment #2, 8651st AAU

Naples, Italy

SPECIAL ORDERS 8 JUNE 1954

Number 64

1. MAJOR ORIN A. FAYLE O1104146, CE, MOS 2162, Race Cau, Comp USAR Cat III, is reld fr asgd Det #2, 8651st AAU, Naples, Italy, and asg OC of ENGRS, Washington, DC, to rept to Rm 1A876 The Pentagon, to apply Aloc M-7. 30 DDALV. Tvl by mil/comm air, rail, and surface trans auth. Tvl by privately owned vehicle auth. WP from Naples, Italy, to CONUS o/a 18 Jun 54. Shpmt of HHG auth UP JTR. Shpmt of privately owned vehicle via MSTS auth. If shpmt other than MSTS it will be at no expense to the Govt. Concurrent tvl of fol dependents auth: Mrs. Pierrette Fayle, Wife; Patrick A. Fayle, son; Paul R. Fayle, son. All comds through which this shpmt passes will process off as atchd and will not report him in their asgd strength. EDCSA contained in this order is app to OC of ENGR, Wash, DC. EDCSA 28 Jun 54. Bag alws 65 lbs plus 100 lbs excess auth while tvl by air. Auth: DA Msg 521593. PCS. TDN. TPA. 2142010 401-11-211-19 P 1410-02, 03, 07 S99-999. On or after 1 Jul 54 2152010 501-9-209-14 P 1311-02, 03, 07 S99-999 applies.

2. COL HOWELL H. JORDAN O16906, Inf, RA, MOS 1542, is reld fr asgd Det #2, 8651st AAU, Naples, Italy, and asgd 3350 ASU Ares ADGRU, Jacksonville, Fla. To apply Aloc Adv/Jun-9. 45 DDALV. Upon arrival Sta Asgd to rept by ltr to CG Third Army, Ft McPherson, Ga. Tvl by mil/comm air, rail, and surface trans auth. Tvl by privately owned vehicle auth. WP fr Naples, Italy, to CONUS o/a 10 Jul 54. All commands through which this shpmt passes will process off as atchd and will not report him in their asgd strength. EDCSA

contained in this order is applicable to 3350th ASU Ares ADGRU, Jacksonville, Fla. EDCSA 22 Jul 54. Auth: DA Msg 521404. PCS. TDN. TPA. 2152010 501–9–209–14 P 1311–02, 03, 07 S99–999.

3. LT COL EMERY E. HYDE O51576, Inf is asgd PDY Actions Off (2616) Plans Br, P&O Div eff 7 Jun 54.

By command of MAJOR GENERAL BYERS:

VINCENT BELLINO
Capt. AGC
Adjutant

Official:

VINCENT BELLINO
Capt. AGC
Adjutant

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MANHATTAN CO.,
*Washington, D. C., September 2, 1954.*

STATEMENT

On August 27, 1954, the undersigned, an authorized representative of our company, inspected the items listed on the attached sheets (listed under personal clothing and miscellaneous items—two pages, DA Form 1089). The items of personal property were found to be damaged beyond economical repair and of no salvage value. The damage was caused by mildew.

The undersigned employee has had approximately 20 years' experience in the inspection and handling of garments and materials for the purpose of repair and rehabilitation.

MANHATTAN CO.,
SMYTH E. HELMS,
*Dry Cleaning Department.*

Calendar No. 1939

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1919

# COMDR. GEORGE B. GREER

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R 3268]

The Committee on the Judiciary, to which was referred the bill (H. R. 3268) for the relief of Comdr. George B. Greer, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

### AMENDMENT

Page 2, line 12, strike out the words "in excess of 10 per centum thereof".

### PURPOSE

The purpose of the proposed legislation, as amended, is to pay the sum of $2,206.66 to Comdr. George B. Greer for personal property loss on August 16, 1953, in an explosion in quarters M, New York Naval Shipyard. Commander Greer has been paid under the Military Personnel Claims Act of 1945 the sum of $2,500, leaving a balance of $2,206.66, which must be paid by private legislation. It is true that general legislation is pending in the Congress; however, your committee is of the opinion that this claimant should not be deprived of the payment on his claim until the pending general bill is enacted. The amount as set forth in the bill is verified by the Department of the Navy.

### STATEMENT

The statement relative to the above legislation is contained in House Report No. 531 and is set forth in the report of the Department of the Navy, which is as follows:

DEPARTMENT OF THE NAVY,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
*Washington, D. C., April 8, 1955.*

Hon. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,*
*House of Representatives, Washington, D. C.*

MY DEAR MR. CHAIRMAN: Reference is made to your letter of February 7, 1955, to the Secretary of the Navy requesting comment on H. R. 3268, a bill for the relief of Comdr. George B. Greer.

H. R. 3268 would direct the Secretary of the Treasury to pay to Comdr. George B. Greer, United States Navy, the sum of $2,206.66 in full settlement of all claims for compensation due him for personal property lost or damaged on August 16, 1953, in an explosion in quarters M, New York Naval Shipyard.

The records of the Navy Department confirm the recitation in the bill that a payment of $4,706.66 was due to Commander Greer but that payment to him was limited to $2,500 under the limitations of the Military Personnel Claims Act of 1945, as amended (31 U. S. Code 222c).

The $2,500 limitation on claims of this kind has resulted in hardship and substantial loss to members of the military services in many cases. In recognition of this fact, the Department of Defense proposed legislation in 1954 to remove this limitation. A bill to accomplish this purpose, H. R. 7068, 83d Congress, was passed by the House of Representatives but did not come to a vote in the Senate. A similar proposal is a part of the Department of Defense legislative program for 1955 and has been introduced as H. R. 3996, which is now pending before your committee. The enactment of H. R. 3996 would achieve the same result for Commander Greer as would the enactment of H. R. 3268 and, in addition, would provide the means for others who are similarly situated to obtain settlement of their claims.

In view of the foregoing, although the Department of the Navy recommends enactment of H. R. 3268, general legislation such as that contained in H. R. 3996 would be preferable.

The Department of the Navy has been advised by the Bureau of the Budget that there is no objection to the submission of this report on H. R. 3268 to the Congress.

Sincerely yours,

IRA H. NUNN,
*Rear Admiral USN, Judge Advocate General of the Navy*
(For the Secretary of the Navy).

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DEPARTMENT OF THE NAVY,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
*Washington, D. C., July 8, 1954.*

From: The Judge Advocate General.
To: Comdr. George Burgess Greer, USN, 71983/1710.
Subject: Claim for loss of personal effects; appeal of.
Re (*a*) Your letter to SECNAV (JAG) of May 12, 1954.
(*b*) Public Law 439, 82d Congress, approved July 3, 1952.

1. By claim dated October 16, 1953, you requested reimbursement in the amount of $5,409.06 for personal property damaged and/or destroyed in an explosion and fire in house M, New York Naval Shipyard, on August 16, 1953. This claim was adjudicated by the Bureau of Naval Personnel, and it was determined that $4,706.66 was due on the claim. Payment to you in the amount of $2,500, the maximum sum allowable under reference (*b*), was made. By reference (*a*) you request that the necessary legal steps be taken to obtain authorization for payment of the balance found due.

2. The $2,500 limitation which was placed in the Military Personnel Claims Act by reference (*b*) has resulted in hardship and substantial loss to members of the military services in many cases. Recognizing this fact, the Department of Defense, in its legislative program for 1954, requested that action be taken by Congress to remove the limitation. On January 7, 1954, H. R. 7068 was introduced in the House of Representatives. This bill, if enacted as presently worded, will retroactively remove the limitation, thus permitting settlement of your claim in the full amount found to be due.

IRA H. NUNN.
IRA F. REESE.

*Schedule of property*

| Quantity | Name of article | Cost price of each | Date of purchase | Value of each when lost or destroyed | If damaged only, estimate damage sustained | Amount recommended by investigating officer | Allowed value for cash payment |
|---|---|---|---|---|---|---|---|
| 1 | Electric razor | $22.00 | December 1952 | $19.80 | | $19.80 | $19.80 |
| 12 | Old Rubina water glasses (antique). | 2.50 | June 1947 | 1.87 | | 22.44 | 16.83 |
| 1 | Toilet set (bathroom) | 18.00 | June 1953 | 15.00 | | 15.00 | 15.00 |
| 1 | French bedroom clock, (antique). | 30.00 | January 1949 | 15.00 | | 15.00 | 11.25 |
| 1 | Glass-covered case, with waxed flower and case (antique). | 16.00 | February 1953 | 12.00 | | 12.00 | 9.00 |
| 1 | Dresden ornamented bed lamp (antique). | 30.00 | June 1947 | 22.50 | | 22.50 | 16.86 |
| 2 | Ornamental ceramic pieces (hand and shoe) (antique). | 7.50 | do | 5.62 | | 11.24 | 8.43 |
| *1 | Singer sewing machine (see note No. 1). | 189.00 | September 1950. | 173.88 | $129.00 | 129.00 | 129.00 |
| 1 | Longine Wittnauer white gold ladies watch, with band. | 125.00 | December 1952. | 50.00 | | 50.00 | 50.00 |
| 3 pairs | Men's pajamas (new and unused). | 4.25 | do | 3.00 | | 9.00 | 7.98 |
| 1 | Man's silk dressing robe | 18.00 | do | 12.00 | | 12.00 | 12.00 |
| *1 | Television set (see note No. 2) | 299.00 | October 1952 | 263.12 | 204.00 | 204.00 | 204.00 |
| 1 | Television table, adjustable | 20.00 | do | 19.00 | | 19.00 | 19.00 |
| 1 | Lahala Hawaiian rug (20 by 14 feet). | 112.00 | June 1952 | 95.20 | | 95.20 | 95.20 |
| 12 | Profession books | 3.00 | December 1952. | 2.25 | | 27.00 | 27.00 |
| 20 | Fiction books | 1.80 | August 1951-August 1953. | .90 | | 18.00 | 18.00 |
| 4 | Hand-carved Marshallese boats. | 10.00 | January 1949 | 7.50 | | 30.00 | 22.50 |
| 1 | Large turtle back curio | 12.00 | September 1949. | 8.00 | | 8.00 | 6.00 |
| | Walnut coffee table | 70.00 | August 1951 | 62.50 | | 62.50 | 62.50 |
| | Total | | | 789.14 | 333.30 | 781.68 | |
| 1 | Marble top table | 90.00 | October 1951 | 81.00 | | 81.00 | 77.25 |
| 1 | Desk clock (electric) | 15.00 | December 1952 | 14.00 | | 14.00 | 14.00 |
| 1 | Antenna control mechanism (remote electric). | 30.00 | October 1952 | 22.50 | | 22.50 | 22.50 |
| 1 set | Indoor antenna | 6.00 | February 1953 | 4.50 | | 4.50 | 4.50 |
| 3 | Decorated vases with teakwood stands. | 3.50 | May 1953 | 2.62 | | 7.86 | 5.89 |
| 20 | Glass balls | .50 | September 1949. | .37 | | 7.40 | 7.40 |
| 1 | Walnut footstool (antique) | 12.00 | January 1947 | 8.00 | | 8.00 | 6.00 |
| 2 | Majolica flower vases (antique) | 10.00 | January 1934 | 7.50 | | 15.00 | 11.24 |
| 1 | Oblong flower vase (Majolica) (antique). | 8.00 | July 1952 | 6.00 | | 6.00 | 4.50 |
| 1 | Large crystal flower vase | 16.00 | do | 12.00 | | 12.00 | 12.00 |
| 1 | Oblong crystal vase | 7.00 | do | 5.25 | | 5.25 | 5.25 |
| *1 | Electric clothes dryer (see note No. 3) (repairs). | 235.00 | September 1952. | 211.50 | 36.40 | 36.40 | 36.40 |
| *1 | Electric washer (see note No. 4) (repairs). | 199.00 | do | 179.10 | 5.00 | 5.00 | 5.00 |
| 1 | Console model Magnavox combination radio and phonograph. | 205.95 | May 1952 | 189.40 | | 189.40 | 177.55 |
| 60 | Records | .89 | January 1947-August 1953. | .45 | | 27.00 | 27.00 |
| 1 | Mahogany dropleaf dining table. | 90.00 | October 1951 | 81.00 | | 81.00 | 81.00 |
| 6 | Bristol glass trays (antique) | 3.00 | May 1952 | 2.25 | | 13.50 | 10.12 |
| 1 | Framed portrait (Bishop T. J. Feeney). | 30.00 | November 1951. | 30.00 | | 30.00 | 30.00 |
| 1 | Large oil painting | 140.00 | August 1952 | 100.00 | | 100.00 | 100.00 |
| | Total | | | 957.44 | 41.40 | 665.81 | |
| 2 | Goldleaf picture frames | 35.00 | July 1947 | 20.00 | | [1] 35.00 | 40.00 |
| 1 | Goldleaf picture frame | 25.00 | do | 20.00 | | [1] 12.50 | 15.00 |
| 8 | Walnut hand carved chairs (antique). | 58.00 | August 1949 | 43.50 | | 348.00 | 261.00 |

[1] Disallowed.

*Schedule of property*—Continued

| Quantity | Name of article | Cost price of each | Date of purchase | Value of each when lost or destroyed | If damaged only, estimate damage sustained | Amount recommended by investigating officer | Allowed value for cash payment |
|---|---|---|---|---|---|---|---|
| 3 | Large handmade silk lamp shades. | $15.30 | October 1952 | $12.26 | | $36.78 | $36.78 |
| 1 | Marble top hand carved teakwood table. | 60.00 | August 1952 | 57.00 | | 57.00 | 57.00 |
| 1 | Wall clock, electric | 24.00 | November 1952. | 23.80 | | 23.80 | 23.00 |
| 2 pair | Pigeon-blood cloisonne vases with teakwood stands. | 18.00 | October 1948 | 13.50 | | 27.00 | 20.25 |
| 1 | Large framed etching | 45.00 | August 1948 | 45.00 | | 45.00 | 45.00 |
| 1 | Chinese flower vase | 7.00 | October 1951 | 5.25 | | 5.25 | 5.25 |
| 5 | Embroidered fine linen guest towels. | 3.25 | March 1952 | 2.45 | | 12.25 | 12.25 |
| 3 | Rubina glass candy and nut dishes (antique). | 2.50 | August 1948 | 1.87 | | 5.61 | 4.23 |
| 1 | Chippendale display cabinet, with framed mirror (antique). | 80.00 | do | 60.00 | | 60.00 | 45.00 |
| 6 | Civilian men's shirts | 4.00 | December 1952. | 2.00 | | 12.00 | 12.00 |
| 2 | Wool khaki uniform shirts | 7.50 | do | 3.75 | | 7.50 | 7.50 |
| 2 | Iron-wood marble-top coffee tables. | 35.00 | August 1951 | 31.50 | | 63.00 | 63.00 |
| 1 | Chinese carving | 25.00 | April 1952 | 18.75 | | 18.75 | 14.07 |
| 1 | do | 16.00 | October 1948 | 12.00 | | 12.00 | 12.00 |
| 2 | Glass Chinese ornamental Ming tree. | 10.00 | do | 7.50 | | 15.00 | 15.00 |
| 2 | Old ivory carvings, with stand. | 7.50 | do | 5.62 | | 11.24 | 8.43 |
| 10 | Ivory carvings | 7.50 | do | 5.62 | | 56.20 | 42.15 |
| 1 | Royal Worcester figurine (antique) | 16.00 | November 1949. | 12.00 | | 12.00 | 9.00 |
| | Total | | | 403.37 | | 875.88 | |
| 1 | Large bevel glass mirror | 60.00 | August 1951 | 54.00 | | 54.00 | 27.00 |
| 5 | Marshallese hand-carved mother-of-pearl cigarette boxes. | 6.00 | March 1947 | 4.50 | | 22.50 | 16.87 |
| 2 sets | Hand-carved ivory elephants on stand. | 13.50 | October 1948 | 10.11 | | 20.22 | 15.16 |
| 2 sets | Cloisonne (vases, plates, and teakwood stands). | 54.50 | do | 40.87 | | 81.74 | 61.30 |
| 2 sets | do | 20.00 | do | 15.00 | | 30.00 | 22.50 |
| 2 | Decorated Chinese vases, with stands. | 7.50 | do | 5.62 | | 11.24 | 8.43 |
| 1 | Porcelain figurine | 9.00 | do | 6.75 | | 6.75 | 6.75 |
| 2 | Large teakwood carvings | 8.00 | do | 6.00 | | 12.00 | 9.00 |
| 1 | Bathroom toilet set | 28.05 | December 1952. | 20.00 | | 20.00 | 15.00 |
| 1 | Ladies evening bag | 15.00 | October 1952 | 10.00 | | 10.00 | 10.00 |
| 4 pairs | Ladies gloves | 2.50 | July 1952 | 2.00 | | 8.00 | 8.00 |
| 1 | Box of calling cards | 3.00 | do | 3.00 | | 3.00 | 3.00 |
| 1 | Guest book | 7.50 | August 1948 | 5.00 | | 5.00 | 5.00 |
| 1 | Fountain pen | 3.50 | December 1952. | 3.00 | | 3.00 | 3.00 |
| 1 pair | Shooting glasses (B. and S.) | 6.00 | July 1952 | 4.00 | | 4.00 | 4.00 |
| 2 pairs | Sun glasses | 2.25 | do | 1.50 | | 3.00 | 3.00 |
| 1 | 50 by 50 inch motion picture screen. | 29.30 | March 1952 | 23.50 | | 23.50 | 23.50 |
| 2 pairs | Men's shoes | 9.00 | April 1953 | 6.00 | | 12.00 | 12.00 |
| 2 sets | Marshallese handmade table service mats. | 12.00 | October 1949 | 8.00 | | 16.00 | 12.00 |
| 1 | Mantle clock | 40.00 | August 1950 | 36.00 | | [1] 34.00 | 34.00 |
| 5 | Hawaiian watercolor pictures (framed). | 12.00 | February 1952 | 10.00 | | 50.00 | 50.00 |
| 1 | Officer's uniform hat | 21.00 | June 1953 | 14.00 | | 14.00 | 14.00 |
| | Total | | | 288.85 | | 443.95 | |
| 1 set | Sterling silver coffee service (service for 8). | 375.00 | October 1951 | 281.25 | | 281.25 | 210.93 |
| 1 | Large sterling silver tray for coffee set. | 350.00 | do | 262.50 | | 262.50 | 196.87 |
| 1 pair | Sterling silver candelabras | 166.00 | December 1951 | 124.25 | | 124.25 | 93.19 |
| 12 | Sterling silver liqueurs | 4.30 | April 1952 | 3.22 | | 38.64 | 28.98 |
| 2 sets | Gold and white Nortake dishes (each service for 12). | 112.00 | March 1952 | 84.00 | | 168.00 | 168.00 |
| 2 | Early American Amber crystal tray (antique). | 12.00 | June 1948 | 8.00 | | 16.00 | 12.00 |

[1] Disallowed.

*Schedule of property*—Continued

| Quantity | Name of article | Cost price of each | Date of purchase | Value of each when lost or destroyed | If damaged only, estimate damage sustained | Amount recommended by investigating officer | Allowed value for cash payment |
|---|---|---|---|---|---|---|---|
| 1 | Waterford glass crystal deep dish tray (antique). | $16.00 | June 1948 | $12.00 | | $12.00 | $9.00 |
| 2 | Waterford glass compotes with stands (antique). | 32.00 | do | 24.00 | | 48.00 | 36.00 |
| 1 | Waterford wine decanter (antique). | 20.00 | January 1953 | 16.00 | | 16.00 | 12.00 |
| 1 | Bristol glass wine set (decanter and 12 glasses) (antique). | 48.00 | March 1953 | 36.00 | | 36.00 | 27.00 |
| 1 | Crystal cutglass liqueur set (decanter with 12 matching glasses). | 30.50 | January 1953 | 22.87 | | 22.87 | 22.87 |
| 1 | Demitasse set, bone china (service for 8). | 30.00 | March 53 | 22.50 | | 22.50 | 22.50 |
| 1set | Draperies for House M, New York Naval Shipyard. | 651.00 | October 1952 | 520.80 | | 520.80 | 520.80 |
| 5 | Monkey pod condiment sets | 4.00 | May 1952 | 3.00 | | 15.00 | 11 25 |
| 4 | Cloisonne condiment set | 3.00 | April 1952 | 2.25 | | 9.00 | 6.75 |
| 1 | Large monkey pod salad bowl | 22.00 | May 1950 | 16.50 | | 16.50 | 12.37 |
| 1 | Medium monkey pod salad bowl. | 16.00 | do | 12.00 | | 12.00 | 9.00 |
| | Total | | | 1,451.14 | | 1,621.31 | |
| 1 | Large monkey pod serving tray. | 16.00 | do | 12.00 | | 12.00 | 9.00 |
| 6 | Salad bowls | 4.00 | do | 3.00 | | 18.00 | 18.00 |
| 1 | Copper chafin dish with tray | 24.00 | March 1953 | 18.00 | | 18.00 | 18.00 |
| 1 | Cutglass crystal covered butter dish (antique). | 9.00 | March 1952 | 6.75 | | 6.75 | 5.07 |
| 1 | Silver-plated cruet set with 5 crystal bottles. | 40.00 | October 1948 | 30.00 | | 30.00 | 30.00 |
| [1]1 | Fine linen table cloth (repair) (See note No. 5.) | 70.00 | do | 52.50 | $12.00 | 12.00 | 12.00 |
| 2 | Large hand-painted water colored pictures (framed). | 20.00 | August 1939 | 16.00 | | 32.00 | 32.00 |
| 1 | Hand-decorated crystal salad bowl (antique). | 16.00 | do | 12.00 | | 12.00 | 9.00 |
| 1 | Large hand-decorated cake plate. | 16.00 | do | 12.00 | | 12.00 | 12.00 |
| 12 | Dresden glass table place card holders. | 3.00 | January 1953 | 2.25 | | 27.00 | 27.00 |
| 4 | Dresden figurines | 6.50 | October 1948 | 4.87 | | 19.48 | 19.48 |
| 1 | Large Chippendale framed mirror. | 160.00 | August 1952 | 152.00 | | 152.00 | 76.00 |
| [1] | Bill for silver repair (see note No. 6). | 90.00 | November 1951. | 67.50 | 43.00 | 43.00 | 43.00 |
| 1 | Table centerpiece mirror with silver-plated holder. | 8.00 | January 1953 | 6.00 | | 6.00 | 6.00 |
| 1 | Table brush and tray | 6.00 | do | 4.50 | | 4.50 | 4.50 |
| 1 | Ornamental dinner bell (antique). | 6.00 | October 1948 | 4.50 | | 4.50 | 3.36 |
| 1 | Punch bowl set, old cutglass, service for 12. | 65.00 | March 1953 | 48.75 | | 48.75 | 48.75 |
| | Total | | | 452.62 | 55.00 | 457.98 | |
| 12 | Fostoria crystal water glasses | 3.00 | April 1952 | 2.25 | | 27.00 | 27.00 |
| 12 | Fostoria crystal sherbet glasses. | 3.00 | do | 2.25 | | 27.00 | 27.00 |
| 12 | Fostoria crystal fish cocktail glasses. | 3.00 | do | 2.25 | | 27.00 | 27.00 |
| 12 | Fostoria crystal plates | 3.00 | do | 2.25 | | 27.00 | 27.00 |
| 1 | Stock of groceries | 20.00 | August 1953 | 20.00 | | 15.00 | 15.00 |
| 12 | Early American pressed Rubina glass dishes (antique). | 2.00 | June 1953 | 1.50 | | 18.00 | 13.50 |
| 1 | Rubina pressed glass bowl (antique). | 16.00 | do | 12.00 | | 12.00 | 9.00 |
| 1 | Set kitchen dishes (service for 8). | 49.50 | October 1951 | 37.00 | | 37.00 | 37.00 |
| 10 | Crystal egg cups | 1.50 | April 1953 | 1.10 | | 11.00 | 11.00 |
| 12 | Crystal hand cut finger bowls | 1.50 | do | 1.10 | | 13.20 | 13.20 |
| 4 | Early American spice jars | 4.00 | January 1949 | 3.00 | | 12.00 | 12.00 |
| 3 | French earthenware casserole dishes. | 3.00 | February 1953 | 2.25 | | 6.75 | 6.75 |
| 1 | Sunbeam coffeemaker set | 27.00 | November 1952. | 24.30 | | 24.30 | 24.30 |

[1] Disallowed.

*Schedule of property*—Continued

| Quantity | Name of article | Cost price of each | Date of purchase | Value of each when lost or destroyed | If damaged only, estimate damage sustained | Amount recommended by investigating officer | Allowed Value for cash payment |
|---|---|---|---|---|---|---|---|
| 1 | Early American copper teakettle. | $12.00 | February 1953. | $8.00 | | $8.00 | $8.00 |
| 1 | Early American glass rolling pin (collector's item). | 20.00 | March 1953 | 15.00 | | 15.00 | 13.50 |
| 1 | Electric kitchen clock | 8.00 | August 1952 | 6.00 | | 6.00 | 6.00 |
| | Stock: Whiskey, wine, liquers (14 bottles). | 50.00 | August 1953 | 50.00 | | [1] 30.00 | |
| 1 | Thermos bottle | 4.00 | January 1953 | 3.00 | | 3.00 | 3.00 |
| | Total | | | 193.25 | | 319.25 | |
| 1 | Early American Rubina glass pitcher, early American. | 16.00 | March 1953 | 12.00 | | 12.00 | 9.00 |
| 1 | Crystal silver top syrup pitcher (antique). | 17.50 | do | 13.10 | | 13.10 | 9.81 |
| 1 | Crystal candy compote, with cover. | 12.00 | January 1953 | 8.00 | | 8.00 | 8.00 |
| 3 | Early American cutglass jars | 4.00 | do | 3.00 | | 9.00 | 6.75 |
| 1 pair | Kitchen salt and pepper shakers. | 2.00 | August 1952 | 1.50 | | 1.50 | 1.50 |
| 1 | Crystal cake stand (antique) | 14.00 | January 1953 | 10.50 | | 10.50 | 7.86 |
| 1 | Tea set Royal Dalton | 24.00 | August 1952 | 18.00 | | 18.00 | 18.00 |
| | Stock cosmetics | 20.00 | August 1953 | 15.00 | | 15.00 | 15.00 |
| 2 | Italian hand-carved marble birds (antique). | 10.00 | January 1950 | 7.50 | | 15.00 | 11.25 |
| * | Remove spun glass and smoke from clothing (see note No. 7). | 200.00 | August 1952-August 1953. | 100.00 | $34.40 | 34.40 | |
| 1 | Electric heating pad | 8.00 | November 1952. | 7.20 | | 7.20 | 7.20 |
| 4 | Suits of officer's white uniform (new and unused). | 20.00 | August 1952 | 15.00 | | 60.00 | 60.00 |
| | Total | | | | | | 4,706.66 |
| | Maximum amount allowable under Public Law 439. | | | | | | 2,500.00 |
| | Total | | | 210.80 | 34.40 | 203.70 | 2,500.00 |

[1] Disallowed.

CHRONOLOGICAL RECORD OF CLAIM SUBMITTED BY COMDR. GEORGE B. GREER, USN, FOR PERSONAL PROPERTY LOSS SUSTAINED IN HOUSE M, NEW YORK NAVAL SHIPYARD, BROOKLYN 1, N. Y.

(*a*) At approximately 11:37 p. m. eastern daylight saving time, August 16, 1953, house M was completely destroyed by a violent explosion accompanied by several fires.

(*b*) A naval board of investigation, which was ordered by the commander, New York Naval Shipyard, determined that the disaster was caused by a defective electric cable which had run through the shipyard adjacent to the house, under the house, then to another building, (the defective cable did not furnish service to house M). If was further determined specifically that the cable had developed a high resistance short circuit causing the cable and its surrounding fibrous conduit to be consumed by smoldering. This slow burning generated gases which followed the cable path under the house, forming a concentrated explosive mixture. (Pictures of the defective cable and house M are available.)

(*c*) October 16, 1953, Comdr. George B. Greer submitted a claim for $5,409.06 as reimbursement for loss of personal property (NavExos 2662A).

(*d*) March 19, 1954, the Bureau of Naval Personnel (NavExos 2662A) approved Commander Greer's claim for $4,706.66.

(*e*) March 19, 1954, the Chief of Naval Personnel directed payment of $2,500, the amount allowed by Public Law 439 (82d Cong.) (copy attached).

(*f*) March 31, 1954, $2,500 paid by public voucher 233243.

(*g*) May 12, 1954, Commander Greer appealed and requested the Secretary of the Navy (Judge Advocate General) to take legal steps to obtain payment of the balance due, $2,206.66 (copy attached).

(h) July 8, 1954, Judge Advocate General's reply indicated that machinery had been set in motion toward obtaining payment of balance due (see copy attached).

(i) August 27, 1954, Commander Greer telephoned the Judge Advocate's Office and was informed that the proposed legislation passed the House of Representatives. but did not come up in the Senate before adjournment. The Judge Advocate's Office spokesman stated that there were originally several officers affected by the $2,500 limitation, all of whom had obtained relief through the efforts of their individual congressional representatives. He suggested that I do likewise, since ample precedents had been set.

After a study of the foregoing, the committee is constrained to agree with the action of the House and recommends that the bill (H. R. 3268), as amended, be considered favorably.

O

Calendar No. 1940

84TH CONGRESS, 2d Session } SENATE { REPORT No. 1920

# PAULINE H. CORBETT

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 3957]

The Committee on the Judiciary, to which was referred the bill (H. R. 3957) for the relief of Pauline H. Corbett, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

### AMENDMENT

On page 1, line 6, strike out the figure "$18,716.97" and insert in lieu thereof "$38,317.19".

### PURPOSE

The purpose of the proposed legislation, as amended, is to pay to Pauline H. Corbett, of Charleston, W. Va., the sum of $38,317.19 in full settlement of all claims against the United States on account of severe personal injuries and disabilities sustained by her as a result of an overdosage of streptomycin which she received while a patient at the Tokyo Army Hospital, Tokyo, Japan, from November 2 to 28, 1950, as a civilian employee of the General Headquarters, Far East Command, United States Army, engaged in a nonappropriated fund activity.

### STATEMENT

H. R. 3957 as originally submitted to the House provided for payment in the sum of $54,940, but the bill was amended and passed by the House in the amended form, reducing that figure to $18,716.97. The award provided in the bill as originally introduced was the amount figured by the claimant to be the correct amount to which she would be entitled under the act relating to classified civil-service employees.

The facts in the case are as follows:

The records of the Department of the Army show that Mrs. Pauline H. Corbett was born on June 25, 1903, in Oakland, Coles County, Ill., and presently resides at 1303A Lewis Street, Charleston, W. Va. Her husband died in 1949, and she does not have any dependents. Mrs. Corbett was employed as an accountant by the Special Services Section, Far East Command, United States Army, for a period of approximately 3 years prior to November 2, 1950, and at that time was 47 years of age. This employment was from nonappropriated funds. Under Mrs. Corbett's contract of employment with the Special Services Section, she was entitled to receive from the Army all necessary medical care and hospitalization while serving in an area where private medical facilities were not available. She reported to the Tokyo Army Hospital, Tokyo, Japan, on November 2, 1950, with elevated temperature and physical findings indicating an acute pelvic inflammatory disease. She was then given intense treatment with antibiotics, including streptomycin, for a period of 12 days. During that time, her temperature and symptoms subsided, indicating control of the infection. The streptomycin was discontinued and, with her written consent, a hysterectomy was performed on November 21, 1950. At this point, the hospital records, as disclosed by the report of the Department of the Army, show that the patient withstood the procedure well and left the operating room in excellent condition. Streptomycin was again recommended and administered for an additional 7 days.

Although the hospital records contain no notes regarding the involvement of the vestibular nerve (the branch of the eighth cranial nerve which supplies the vestibule of the inner ear and the ampullae of the semicircular canal), in 3 days before discharge from the hospital, Mrs. Corbett was examined in the eye clinic and fitted for corrective spectacles after mention was made of blurring of vision. Prior to that time, she had not worn glasses and had had no visual difficulties. Mrs. Corbett was discharged from the hospital on December 9, 1950, and 7 days thereafter was seen in the eye, ear, nose, and throat clinic. Examinations indicated severe damage to each labyrinth (the internal ear or its bony or membranous part), accounting for her severe dizziness.

On January 4, 1951, she returned to work and kept trying to work until July 5, 1951. She resigned on this latter date due to the above disturbances and returned to the United States. No improvement in her condition has been noted since her return and it is the considered opinion of three competent eye, ear, nose, and throat specialists consulted by Mrs. Corbett that she has incurred irreparable and permanent vestibular damage. At the request of the Department of the Army, Mrs. Corbett was examined at the United States Naval Ordnance Plant, South Charleston, W. Va., by a Medical Corps officer on March 25, 1954. In the report of the Department of the Army, the result of that examination is set forth as follows:

Pe: Examination reveals the following positive findings: (*a*) BP 148/80 P. 72 Wt. 211; (*b*) Slight tremor of fingers; (*c*) Positive Romberg's sign; (*d*) Eye grounds not visualized adequately.

The Department of the Army report further states as follows:

It is believed that Mrs. Corbett, having had adequate examinations by qualified specialists, does have a loss of function of the vestibular sense (a sense, the end organs of which, lying in the vestibule of the inner ear, contain the otoliths

and are stimulaged by the pull of gravity and by head movements) as a result of streptomycin toxicity and this damage is permanent and total.

Mrs. Corbett presented a claim to the Bureau of Employees' Compensation on June 25, 1951. However, this claim for compensation under the Federal Employees' Compensation Act was rejected by the Director of the Bureau of Employees' Compensation for the reason "that the claimant was not a civil officer or employee of the United States," because she was paid from nonappropriated funds.

It appears that Mrs. Corbett was earning $4,075 per year as a GS7–S3. As a result of the incident in question she incurred certain medical expenses for physical examinations and physiotherapy treatments of 1 year's duration. These expenses are as follows:

Bills are available for the following:

| | |
|---|---|
| Robert E. Nye, D. O | $95 |
| Katie Geissinger, RN | 72 |
| William B. Rossman, M. D | 10 |
| The Shepherd Hospital | 19 |
| G. P. Heffner, M. D | 10 |
| V. E. Holcombe, M. D | 25 |
| M. J. Thomas, M. D., and William K. Markle, M. D | 15 |
| Subtotal | 246 |

In addition thereto, Mrs. Corbett claims she made other payments, for which no bills are available, as follows:

| | |
|---|---|
| Amano (Japanese therapist and masseuse in Tokyo), 60 treatments at $1.12 each | $67 |
| Nina Mount, therapist (Charleston, W. Va.), 9 treatments at $3 each | 27 |
| Subtotal | 94 |
| Total | 340 |

The evidence in this case fairly establishes that during the course of treatment which Mrs. Corbett received at the Tokyo Army Hospital, she was administered enough streptomycin to have sustained permanent and total damage to the vestibular nerves, resulting in total disability; and that by reason of such injury she incurred medical expenses totaling $340.

After a careful consideration of all the facts and circumstances in this case, it is the view of the Department of the Army that the drug (streptomycin) was given of necessity to control an existing infection. The toxic effect of streptomycin is well appreciated, but the drug is used with a calculated risk. While there is no evidence of lack of professional judgment in this case, it is the opinion of this Department that Mrs. Corbett should be compensated in a reasonable amount for the total disability sustained by her as a result of her injury.

At the time of the incident there was no statute available to the Department under which she could be compensated administratively for the damages sustained by her. However, Department of Army Regulations 210–52, implementing the act of June 19, 1952 (66 Stat. 138, 139), now require that all nonappropriated fund instrumentalities of the Army outside the continental limits of the United States and in Alaska provide compensation benefits to civilian employees for death or disability incurred in the course of employment.

Paragraphs 4 and 5 of the aforementioned regulations provide as follows:

"4. *Coverage provided.*—Benefits will be paid civilian employees of the instrumentalities for death or disability arising out of or in the course of employment as such coverage and terms are defined in the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1424, 1426; 33 U. S. C. 902, 903).

"5. *Compensation.*—(a) Civilian employees of the instrumentalities covered who are American citizens are entitled to receive benefits in amounts not less than those provided in sections 7, 8, and 9 Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1427, 1429; 33 U. S. C. 907, 909), as amended."

The Longshoremen's and Harbor Workers' Compensation Act, as amended (44 Stat. 1424, 1429; 33 U. S. C. 902, 909), provides, in pertinent part, as follows:

"SEC. 2. (10) 'Disability' means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment.

* * * * * * * *

"SEC. 6. (b) Compensation for disability shall not exceed $35 per week * * *.

"SEC. 7. (a) * * * The Deputy Commissioner * * * may * * * make an award for the reasonable value of such medical * * * treatment so obtained by the employee * * *.

"SEC. 8. (a) Permanent total disability: In case of total disability adjudged to be permanent 66⅔ per centum of the average weekly wages shall be paid to the employee during the continuance of such total disability. Loss of * * * both eyes * * * shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts.

"SEC. 9. If the injury causes death * * * [inapplicable]."

Referring to the above-quoted provisions of the aforementioned act, it may be readily seen that Mrs. Corbett has incurred a disability. While it is true she has not sustained a physical "loss of both eyes" within the wording of section 8 (a), supra, she has completely lost the use of the eyes for the purpose of gainful employment in her chosen field of endeavor, namely, accounting. Resort to the last sentence of section 8 (a), quoted above, which states "In all other cases permanent total disability shall be determined in accordance with the facts," certainly, in the opinion of this Department, brings the claimant within its purview. The facts fully show that Mrs. Corbett has lost, for the rest of her life, the ability to obtain gainful employment at a salary commensurate with earnings before her unfortunate injury. Never again can she be employed as an accountant.

The records of the Department indicate that Mrs. Corbett feels "that I have lost 17 years of work. If this incident had not happened, I feel that in my line of work, as an accountant, I could have worked until I reached the age of 65." Upon a consideration of all the facts and circumstances in this case, it is the view of the Department of the Army that an award to the claimant in the amount of $30,000, as provided for in H. R. 6531, would be somewhat excessive. The equities in the case indicate that Mrs. Corbett should be granted an award based upon the Longshoremen's and Harbor Workers' Compensation Act, supra, which act would have applied to the facts at hand had the injury been sustained after June 19, 1952, when its coverage was extended to persons in her category.

In computing the compensation lost, this Department has included the time from the claimant's resignation, July 5, 1951, to her 65th birthday, June 25, 1968. To render the computations more simple, earnings lost to date are computed to her birthday this year. Anticipated loss of earnings is computed from her birthday this year to her 65th birthday, using a standard formula to reduce the gross value of these earnings to the immediate cash value. These computations are as follows:

Mrs. Corbett was earning $4,075 per year ($78.36 per week). The Longshoremen's and Harbor Workers' Compensation Act provides 66⅔ percent of average weekly wages ($52.24) shall be paid, section 8 (a), supra, but compensation shall not exceed $35 per week ($5 per day), section 6 (b), supra. Thus, the $5 per day figure is used.

July 5, 1951, to June 25, 1954=1,086 days:

| | |
|---|---|
| 1,086 days, at $5 per day (earnings lost to date) | $5,430.00 |

June 25, 1954, to June 25, 1968=5,127 days:

$$\frac{\text{5,127 days, at \$5 per day}}{\text{\$1 plus (7 percent of 14 years)}} = \frac{\$25,635}{\$1.98} =$$

| | |
|---|---|
| Anticipated loss of earnings | 12,946.97 |
| Total earnings lost, past and anticipated | 18,376.97 |

It is, therefore, believed that an award to the claimant in the amount of $18,716.97, which includes the sum of $340 (the amount Mrs. Corbett has paid or is obliged to pay in medical expenses), would constitute a fair and reasonable award. The Department accordingly would have no objection to the enactment of this bill if it should be amended to provide for an award to the claimant in an amount not to exceed $18,716.97.

The Bureau of the Budget has advised that while there would be no objection to the submission of this report, in the light of reported facts and circumstances, it does not believe that there is any obligation on the part of the Federal Government to provide the relief proposed.

As will be noted, the award set forth by the Department of the Army is based upon the Longshoremen's and Harbor Workers' Com-

pensation Act, as amended. It will be noted further that this act was not in existence at the time of the injuries to the claimant, so that there was no act under which she could receive any remuneration.

A hearing was held before a subcommittee of the Committee on the Judiciary, in which Mrs. Corbett stated that she was led to believe that even though her employment was paid from nonappropriated funds, she and the others so employed were to be dealt with as appropriated fund employees of the civil service and that such regulations under her employment conditions were to be established by the Far East Command for the nonappropriated fund activity. Her statement further continues that such regulations never were established.

Therefore, the committee is confronted with the problem as to what would constitute reasonable payment under these conditions. There appear to be only two avenues open, one, to approve the action of the House and the recommendation of the Department of the Army in placing her under the Longshoremen's and Harbor Workers' Compensation Act, or, two, extending to the claimant the benefits of the Civil Service Act as they apply to civil-service employees. It would appear clear that there is no dispute that Mrs. Corbett is entitled to some remuneration. Subsequent to the hearings, the Department of the Army was requested to present such information as it had relating to what would have been the benefits paid had Mrs. Corbett been employed under appropriated funds at that time, rather than nonappropriated funds. The answer is contained in a letter from the Department of the Army dated May 25, 1955, which is hereto attached:

DEPARTMENT OF THE ARMY,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
*Washington 25, D. C., May 25, 1955.*

SENATE JUDICIARY COMMITTEE,
*Senate Office Building, Washington, D. C.*

GENTLEMEN: Reference is made to your telephonic inquiry of May 20, 1955, regarding H. R. 3957, 84 Congress, a bill for the relief of Pauline H. Corbett, and requesting additional information in connection with the report of the Department of the Army thereon.

The Office of the Director of Employees' Compensation, Department of Labor, has furnished the amount of compensation Mrs. Corbett would receive under the Federal Employees' Compensation Act (39 Stat. 742, 750), as amended (5 U. S. C. 751, et seq.), if she was directly under civil service at the time her disability was incurred, predicated upon information in the files of the Bureau relating to her. These computations are as follows:

Mrs. Corbett was earning $4,482.50 per annum ($4,075 per annum plus 10 percent overseas differential) at the time of injury. Using the two-third rate provided in the act for total disability (sec. 3), this amounts to $2,988.33 per annum. Inasmuch as a lump-sum payment is involved, the present value of all future payments of compensation computed at 4 percent true discount compounded annually must be determined (sec. 14). Thus, if the present age of Mrs. Corbett is 52, using the 4 percent American experience computation table (which includes computations for mortality rate and interest rate), with correction for 12 payments per year, the factor used is 12.7085. Therefore, the present value of this compensation would be $37,977.19.

Two-thirds (total disability rate) of $4,482.50 (annual wage), $2,988.33; $2,988.33 (annual compensation) at 12.7085 (conversion rate), $37,977.19; lump-sum payment under Federal Employees' Compensation Act, $37,977.19.

The Veterans' Administration has advised that compensation received under the Longshoremen's and Harbor Workers' Compensation Act, as amended, or under the Federal Employees' Compensation Act, as amended, is considered income under section II (a) of part III of Veterans' Regulations 1 (A) (38 U. S. C. ch. 12A) which provides that payment of pension for disabilities or death not

the result of service "* * * shall not be made to any unmarried person whose annual income exceeds $1,400 or to any married person or any person with minor children whose annual income exceeds $2,700." However, the Veterans' Administration has advised further that the pension would not be paid only during the year that the income exceeds these amounts.

There is no such limitation as to amount of income received by a widow whose former spouse, being a veteran of World War I, died of a service-connected disability. In such case the widow would continue to receive compensation from the Veterans' Administration without regard to the amount of additional income received by her in any 1 year.

Sincerely yours,

MEREDITH E. ALLEN,
*Lieutenant Colonel, JAGC,*
*Chief, Legislative Claims Division.*

The foregoing indicates that there is a substantial difference between the benefits which would be accorded this claimant, and it further appears that the amount requested in the original bill of $54,940 is in excess of both the computations herein submitted. In view of the condition of the claimant, the committee is inclined to believe that, in all fairness and justice, inasmuch as there was no Longshoremen's and Harbor Workers' Compensation Act at the time of the injury, that Mrs. Corbett should be compensated as a civil-service employee from appropriated funds. It would appear that if regulations had been established by the Far Eastern Command covering situations of this sort, they would have been in conformity with civil-service benefits. The committee, therefore, recommends that the amount of the award be in the sum of $38,317.19, which represents $37,977.19 as a lump-sum payment under the Federal Employees' Compensation Act, and the $340 hospital and medical expenses hereinbefore set forth.

Further, the file indicates, and the hearing further bears out, that there has been an attorney representing Mrs. Corbett in the processing of her claim. Mrs. Corbett has further stated that she has agreed to pay the attorney such legal fees as are commensurate with the work done, up to the legal limit. A letter in the file from the attorney in this matter indicates Mrs. Corbett's statement to be correct. The committee, therefore, recommends that the bill, H. R. 3957, as amended, be considered favorably.

Attached hereto and made a part of this report is the report of the Department of the Army, referred to earlier, together with certain affidavits and other data submitted in connection with this claim.

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DEPARTMENT OF THE ARMY,
*Washington, D. C., July 21, 1954.*

Hon. CHAUNCEY W. REED,
*Chairman, Committee on the Judiciary,*
*House of Representatives.*

DEAR MR. REED: Reference is made to your letter enclosing a copy of H. R. 6531, 83d Congress, a bill for the relief of Pauline H. Corbett, and requesting a report on the merits of the bill.

This bill provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Pauline H. Corbett, Charleston, W. Va., the sum of $30,000. Payment of such sum shall be in full settlement of all claims of the said Pauline H. Corbett against the United States on account of severe personal injuries and disabilities sustained by her as a result of an overdosage of streptomycin which she received while a patient at the Tokyo Army Hospital, Tokyo, Japan, from November 2 to November 28, 1950, as a

civilian employee of the General Headquarters, Far East Command, United States Army, engaged in a nonappropriated fund activity. Since the said Pauline H. Corbett was a civilian employee of the General Headquarters, Far East Command, who was paid from nonappropriated funds, she is not eligible for the benefits of the Federal Employees' Compensation Act, as amended."

The records of the Department of the Army show that Mrs. Pauline H. Corbett was born on June 25, 1903, in Oakland, Coles County, Ill., and now resides at 1303A Lewis Street, Charleston, W. Va.; that her husband died in 1949, and she has no dependents; that she was employed as an accountant by the Special Services Section, Far East Command, United States Army, for a period of approximately 3 years prior to November 2, 1950; that she was 47 years of age as of that date; and that during such period of employment she was paid from nonappropriated funds. It appears that under Mrs. Corbett's contract of employment with the Special Services Section, she was entitled to receive from the Army all necessary medical care and hospitalization while serving in an area where adequate private medical facilities were not available. Mrs. Corbett reported to the Tokyo Army Hospital, Tokyo, Japan, on November 2, 1950, with elevated temperature and physical findings indicating acute pelvic imflammatory disease. She was given intense treatment with antibiotics including streptomycin for 12 days. During that time her temperature and symptoms subsided, indicating control of the infection. Streptomycin was discontinued, and, with her written consent, a hysterestomy (surgical removal of the uterus) was performed on November 21, 1950. Hospital records show the "patient withstood procedure well and left the operating room in excellent condition." Streptomycin was recommended and administered for 7 additional days.

Hospital records contain no notes regarding the involvement of the vestibular nerve (the branch of the eighth cranial nerve which supplies the vestibule of the inner ear and the ampullae of the semicircular canal). However, 3 days before discharge from the hospital Mrs. Corbett was examined in the eye clinic and fitted for corrective spectacles after mention was made of blurring of vision. It appears she had never worn glasses nor had any visual difficulties prior to this time. She was discharged from the hospital on December 9, 1950, and 7 days thereafter was seen in the eye, ear, nose, and throat clinic. Examinations indicated severe damage to each labyrinth (the internal ear or its bony or membranous part), accounting for her severe dizziness.

On January 4, 1951, she returned to work and kept trying to work until July 5, 1951. She resigned on this latter date due to the above disturbances and returned to the United States. No improvement in her condition has been noted since her return and it is the considered opinion of three competent eye, ear, nose, and throat specialists consulted by Mrs. Corbett that she has incurred irreparable and permanent vestibular damage. At the request of this Department, Mrs. Corbett was examined at the United States Naval Ordnance Plant, South Charleston, W. Va., by a Medical Corps officer on March 25, 1954. His examination indicates:

"Pe: Examination reveals the following positive findings:

"(*a*) BP 148/80 P. 72 Wt. 211,

"(*b*) Slight tremor of fingers,

"(*c*) Positive Romberg's sign,

"(*d*) Eye grounds not visualized adequately."

It is believed that Mrs. Corbett, having had adequate examinations by qualified specialists, does have a loss of function of the vestibular sense (a sense, the end organs of which, lying in the vestibule of the inner ear, contain the otoliths and are stimulated by the pull of gravity and by head movements) as a result of streptomycin toxicity and this damage is permanent and total.

Mrs. Corbett presented a claim to the Bureau of Employees' Compensation on June 25, 1951. However, this claim for compensation under the Federal Employees' Compensation Act was rejected by the Director of the Bureau of Employees' Compensation for the reason "that the claimant was not a civil officer or employee of the United States," because she was paid from nonappropriated funds.

It appears that Mrs. Corbett was earning $4,075 per year as a GS7–S3. As a result of the incident in question she incurred certain medical expenses for physical examinations and physiotherapy treatments of 1 year's duration. These expenses are as follows:

Bills are available for the following:

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|---|---|
| Robert E. Nye, D. O. | $95 |
| Katie Geissinger, RN | 72 |
| William B. Rossman, M. D. | 10 |
| The Shepherd Hospital | 19 |
| G. P. Heffner, M. D. | 10 |
| V. E. Holcombe, M. D. | 25 |
| M. J. Thomas, M. D., and William K. Markle, M. D. | 15 |
| Subtotal | 246 |

In addition thereto, Mrs. Corbett claims she made other payments, for which no bills are available, as follows:

| | |
|---|---|
| Amano (Japanese therapist and masseuse in Tokyo), 60 treatments, at $1.12 each | $67 |
| Nina Mount, therapist (Charleston, W. Va.), 9 treatments, at $3 each | 27 |
| Subtotal | 94 |
| Total | 340 |

The evidence in this case fairly establishes that during the course of treatment which Mrs. Corbett received at the Tokyo Army Hospital, she was administered enough streptomycin to have sustained permanent and total damage to the vestibular nerves, resulting in total disability, and that by reason of such injury she incurred medical expenses totaling $340.

After a careful consideration of all the facts and circumstances in this case, it is the view of the Department of the Army that the drug (streptomycin) was given of necessity to control an existing infection. The toxic effect of streptomycin is well appreciated, but the drug is used with a calculated risk. While there is no evidence of lack of professional judgment in this case, it is the opinion of this Department that Mrs. Corbett should be compensated in a reasonable amount for the total disability sustained by her as a result of her injury.

At the time of the incident there was no statute available to the Department under which she could be compensated administratively for the damages sustained by her. However, Department of Army Regulations 210–52, implementing the act of June 19, 1952 (66 Stat. 138, 139), now require that all nonappropriated fund instrumentalities of the Army outside the continental limits of the United States and in Alaska provide compensation benefits to civilian employees for death or disability incurred in the course of employment.

Paragraphs 4 and 5 of the aforementioned regulations provide as follows:

"4. *Coverage provided.*—Benefits will be paid civilian employees of the instrumentalities for death or disability arising out of or in the course of employment as such coverage and terms are defined in the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1424, 1426, 33 U. S. C. 902 ,903).

"5. *Compensation.*—(a) Civilian employees of the instrumentalities covered who are American citizens are entitled to receive benefits in amounts not less than those provided in sections 7, 8, and 9 Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1427, 1429, U. S. C. 907, 909), as amended."

The Longshoremen's and Harbor Workers' Compensation Act, as amended (44 Stat. 1424, 1429, 33 U. S. C. 902, 909), provides, in pertinent part, as follows:

"SEC. 2. (10) 'Disability' means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment.

* * * * * * *

"SEC. 6. (b) Compensation for disability shall not exceed $35 per week * * *.

"SEC. 7. (a) * * * The Deputy Commissioner * * * may * * * make an award for the reasonable value of such medical * * * treatment so obtained by the employee * * *.

"SEC. 8. (a) Permanent total disability: In case of total disability adjudged to be permanent 66⅔ per centum of the average weekly wages shall be paid to the employee during the continuance of such total disability. Loss of * * * both eyes * * * shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts.

"SEC. 9. If the injury causes death * * * [inapplicable]."

Referring to the above-quoted provisions of the aforementioned act, it may be readily seen that Mrs. Corbett has incurred a disability. While it is true she has not sustained a physical "loss of both eyes" within the wording of section 8 (a), supra, she has completely lost the use of the eyes for the purpose of gainful employment in her chosen field of endeavor, namely, accounting. Resort to the last sentence of section 8 (a), quoted above, which states "In all other cases permanent total disability shall be determined in accordance with the facts," certainly, in the opinion of this Department, brings the claimant within its purview. The facts fully show that Mrs. Corbett has lost, for the rest of her life, the ability to obtain gainful employment at a salary commensurate with earnings before her unfortunate injury. Never again can she be employed as an accountant.

The records of the Department indicate that Mrs. Corbett feels "that I have lost 17 years of work. If this incident had not happened, I feel that in my line of work, as an accountant, I could have worked until I reached the age of 65." Upon a consideration of all the facts and circumstances in this case, it is the view of the Department of the Army that an award to the claimant in the amount of $30,000, as provided for in H. R. 6531, would be somewhat excessive. The equities in the case indicate that Mrs. Corbett should be granted an award based upon the Longshoremen's and Harbor Workers' Compensation Act, supra, which act would have applied to the facts at hand had the injury been sustained after June 19, 1952, when its coverage was extended to persons in her category.

In computing the compensation lost, this Department has included the time from the claiment's resignation, July 5, 1951, to her 65th birthday, June 25, 1968. To render the computations more simple, earnings lost to date are computed to her birthday this year. Anticipated loss of earnings is computed from her birthday this year to her 65th birthday, using a standard formula to reduce the gross value of these earnings to the immediate cash value. These computations are as follows:

Mrs. Corbett was earning $4,075 per year ($78.36 per week). The Longshoremen's and Harbor Workers' Compensation Act provides 66⅔ percent of average weekly wages ($52.24) shall be paid, section 8 (a), supra, but compensation shall not exceed $35 per week ($5 per day), section 6 (b), supra. Thus, the $5 per day figure is used.

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|---|---|
| July 5, 1951, to June 25, 1954=1,086 days: | |
| 1,086 days, at $5 per day (earnings lost to date) | $5,430.00 |
| June 25, 1954, to June 25, 1968=5,127 days: | |
| $\frac{\text{5,127 days, at \$5 per day}}{\text{\$1 plus (7 percent of 14 years)}} = \frac{\$25,635}{\$1.98} =$ | |
| Anticipated loss of earnings | 12,946.97 |
| Total earnings lost, past and anticipated | 18,376.97 |

It is, therefore, believed that an award to the claimant in the amount of $18,716.97, which includes the sum of $340 (the amount Mrs. Corbett has paid or is obliged to pay in medical expenses), would constitute a fair and reasonable award. The Department, accordingly, would have no objection to the enactment of this bill if it should be amended to provide for an award to the claimant in an amount not to exceed $18,716.97.

The Bureau of the Budget has advised that while there would be no objection to the submission of this report, in the light of reported facts and circumstances, it does not believe that there is any obligation on the part of the Federal Government to provide the relief proposed.

Sincerely yours,

JOHN SLEZAK,
*Acting Secretary of the Army.*

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AFFIDAVIT OF PAULINE H. CORBETT

STATE OF WEST VIRGINIA,
*County of Kanawha, ss:*

This day came Pauline H. Corbett, who, being first duly sworn, deposes and says as follows:

1. That she resides at 1303A Lewis Street, Charleston, W. Va. (formerly residing at Route 1, Scott Depot, W. Va.), and is the same Pauline H. Corbett who has heretofore presented her claim against the United States of America requesting

compensation for injuries sustained while a civilian nonappropriated fund employee of the United States Army, Far East Command, during confinement and treatment at Tokyo Army Hospital during the month of November 1950.

2. That this affidavit has been prepared and is to be filed and read in connection with the investigation, consideration and presentation of her claim before the Congress of the United States, in order to bring to the attention of proper authorities and the Congress a certain document entitled as follows:

FAR EAST COMMAND NONAPPROPRIATED FUND EMPLOYMENT AGREEMENT

Which said agreement was signed and executed by her at Tokyo, Japan, on March 4, 1949; that on the same date, to wit, March 4, 1949, the said agreement was executed by one "E. Davis (or Davies), Branch I, A. P. O. 500," as will appear from an inspection thereof; that she was informed and believed at that time that the said E. Davis was a female employee in the Civilian Personnel Section, United States Army, Far East Command, at Tokyo, Japan, and had authority to enter into such agreements on behalf of the United States of America; that pursuant to said agreement certain commitments by the Government thereunder were carried out and said agreement considered by Army authorities at Tokyo as a valid and binding obligation of the United States Government to the extent provided by law.

3. That a photostatic copy of said agreement is attached to and made a part of and to be read in connection with this affidavit, and further to be read in connection with and as an integral part of her claim heretofore presented in an affidavit bearing date of 23d day of March 1954, including numerous enclosures and references enclosed therewith and therein set out.

4. That said agreement, to which reference is here made, was a contract of employment obligating deponent as a nonappropriated fund employee, to remain in the employment of the United States Army for a period of 2 years, subject to the occurence of certain conditions therein provided, and in the event such employee failed to fulfill her obligation under the agreement she was to be penalized by forfeiting all rights to transportation to the place of employment at Government expense, and certain other rights and benefits, and that the United States Army, Far East Command, on behalf of the United States of America, contracted to provide certain benefits and to grant such employees certain rights, privileges, and protection in accordance therewith, and that it was generally considered that such a contract and agreement was a condition of employment.

5. That pursuant to the aforesaid agreement, paragraph 6 thereof provided as follows: "Annual and sick leave credits and charges, and treatment and compensation for service-connected injuries or death will be handled pursuant to regulations established by the Far East Command for the nonappropriated fund activity;" that it was understood and generally considered by civilian employees that substantially the same rights and benefits were conferred upon and available to both appropriated and nonappropriated fund employees, including a system of compensation similar to that available to civil-service employees under the Federal Employees Compensation Act, and that the only basic distinction between these two types of Federal employees was the ineligibility of nonappropriated fund employees for retirement benefits, for which no payments were made into the appropriate fund; that in view of the provisions of this employment agreement, deponent therefore believes that appropriate protection and provision for compensation in the form of disability benefits should have been made pursuant to regulations promulgated by the Far East Command, and that in the absence of such regulations providing for compensation benefits, she is remediless save a private act of Congress to compensate her for her total and permanent disability suffered while on duty at Tokyo, Japan, as a nonappropriated fund employee of the United States Army.

And further deponent sayeth not.

PAULINE H. CORBETT.

Taken, subscribed, and sworn to before the undersigned authority this 23d day of June 1954.

[SEAL] CHARLES D. FISHER, *Notary Public.*

My commission expires March 5, 1957.

FAR EAST COMMAND NONAPPROPRIATED FUND EMPLOYMENT AGREEMENT

1. United States continental citizens paid from nonappropriated funds are employed under applicable regulations and directives of the Department of the Army and the Far East Command.

2. Your appointment is of indefinite tenure. You are required to remain in service overseas two years from the time of arrival at permanent duty station except where otherwise noted on the face of the "Report of Personnel Action—Nonappropriated Fund Employees" in order to be entitled to return transportation to your point of hire or place of induction into the armed forces unless you are separated sooner for reasons acceptable to your employer not involving misconduct. The particular employing unit, the location of the work, and the advisability of any transfer within the command will be at the discretion of the nonappropriated fund activity.

3. You will be reimbursed for travel costs from your point of hire to permanent duty station. If you fulfill the terms of your agreement, you will likewise be paid for return transportation to the point of employment or actual residence. If you violate your employment agreement during the first twelve months after arrival, you will be liable for reimbursement for your transportation to the command and for paying your own return transportation. If you violate your agreement during the second year, you will be required to pay your own return transportation.

4. The basic rate is paid for a 40-hour week, which is standard for pay and leave purposes. For work authorized in excess of the hours required by law, overtime compensation will be paid in accordance with the regulations of the employing activity.

5. While in an official travel status, including time en route to and from the place of engagement, you will be in pay status during the time established by this command as the regularly scheduled workweek. No pay is authorized for time spent in official travel during any calendar week in excess of this period, except that hourly and per diem employees will be compensated at straight time rates for time in travel status on nonwork days.

6. Annual and sick leave credits and charges, and treatment and compensation for service-connected injuries or death will be handled pursuant to regulations established by the Far East Command for the nonappropriated fund activity.

7. Quarters and subsistence are presently made available by this command. Charges for quarters, according to the kind made available, will be based upon the established rates. A lease will be signed agreeing to pay such charges.

8. Necessary medical care and hospitalization will be provided by the employing command pursuant to existing Army and Far East Command regulations. Such service will not be furnished in the United States upon return of employee to the zone of interior under hospital orders as a medical evacuee.

9. You will be subject to Far East Command regulations and to military law wherever applicable. Whenever required, prescribed uniforms must be worn and are to be procured according to regulations established therefor.

10. Under present regulations, you are privileged to make purchases at outlets of the Army Exchange Service and quartermaster sales stores, except when restricted by command regulations, and will enjoy all the facilities afforded employees paid from appropriated funds.

11. You are being employed with the understanding that, to the best of your knowledge and belief, you are qualified on the basis of physical condition, character, and training.

12. You will sign this agreement as indication that you have read and understand the provisions set forth herein and that any violation thereof will act to deny you any further rights and privileges herein stated.

PAULINE H. CORBETT.

MARCH 4, 1949.

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STATE OF WEST VIRGINIA,
*County of Kanawha, ss:*

This day came Pauline H. Corbett who, being first duly sworn, says as follows:

1. That she is Pauline H. Corbett of 1303–A Lewis Street, Charleston, W. Va., (formerly Route 1, Scott Depot, W. Va.)., and is the same Pauline H. Corbett who now petitions the Congress of the United States for relief and compensation by the United States Government for permanent disabling injuries which she received during treatment at Tokyo Army Hospital, Tokyo, Japan, from November 2 to 28, 1950, during which period she was a civilian employee of General Headquarters, Far East Command, United States Army; that such employment was by a nonappropriated fund activity for which reason she was denied compensation by the Bureau of Employees' Compensation, United States Department of Labor; that on the 15th day of July 1951, the Civilian Personnel Officer, General Headquarters Far East Command, at Tokyo, addressed a letter to the Bureau of Employees' Compensation, Washington, D. C., requesting a final

determination as to the eligibility of this affiant under applicable Federal laws and rulings, enclosing therewith a statement made by affiant, dated the 25th day of June 1951, a copy of hospital clinical records, numerous affidavits in support of her claim that her disability was solely the result of the injuries which she received while under treatment at Tokyo Army Hospital, and stating that the condition of which she then complained, and does now complain, followed her period of treatment at Tokyo Army Hospital, and also included forms and statements required to be filed in connection with her claim; that such claim is further identified as Case No. X–652907, and considered by the Bureau of Employees' Compensation which denied said claim by an order entered the 15th day of November 1951, on the ground that she was not a civil officer or employee of the United States because she was paid from nonappropriated funds, therefore not within the provisions of the Federal Employees' Compensation Act; that she thereafter employed an attorney who failed through ignorance or otherwise to perfect an appeal to the Employees' Compensation Appeal Board, as the result whereof the said ruling of the 15th day of November 1951, became final, and affiant was precluded from further appeals or proceedings in an effort to obtain compensation such failure being completely without fault on the part of affiant who had relied solely upon advice which she received from her attorney and others; that she is informed and believes that she would be eligible for compensation under the Federal Employees' Act on account of the injuries sustained during her hospitalization at Tokyo, Japan, save and except for the fact that she was not a civil officer or employee of the United States within the terms of the act because her salary as an employee of the United States Army was paid from nonappropriated funds;

That she is now remediless insofar as obtaining redress for compensation for her disability occurring while a Federal Employee except for such relief as may be granted her by the Congress of the United States; that there has heretofore been filed on her behalf, to wit, on July 24, 1953, in the 1st session of the 83d Congress of the United States, House Resolution 6531, upon which no action has thus far been taken, and that this affidavit or petition shall be considered, along with other supporting statements and affidavits in furtherance of her claim before the Congress.

2. That your affiant was employed by Far East Command, United States Army, on November 12, 1947, after reporting for duty at Washington, D. C., and receiving a physical examination from personnel of the American Red Cross in that city, and remained in Government employment until the 19th day of July upon her departure from Tokyo, having been separated from Government employment because of her physical disability following an operation and treatment at Tokyo Army Hospital in November 1950; that her employment by the United States Army at Tokyo was as a Government accountant and a branch chief of her office, charged with the responsibility of accounting for nonappropriated funds derived principally from Army post exchange profits, motion-picture profits, and residual balances from deactivated Army unit funds, all of which devolved upon her great responsibility in accounting and in the organization procedures required to administer various accounts involving many millions of dollars;

That prior to her illness in November 1950, her work was considered outstanding and she was physically able to carry her full workload and was free from any illness or disability, and her record is free from absences on account of illness or disability other than those which would be considered normal and routine prior to November 1950; that, notwithstanding the fact that she was classed with nonappropriated fund personnel, she performed all the duties which civil-service personnel in like positions were required to perform, was subject to close governmental supervision, and there was no essential difference in any respect, except solely from accounting standpoint, between her position and that of appropriated funds personnel; that she is informed and believes that the sole distinction between the appropriated funds personnel and nonappropriated funds personnel was, and is, that the former have civil-service status and are paid from funds budgeted by the Congress, whereas the latter class of personnel are paid from funds which have not been appropriated and budgeted but are derived from profits earned by various nonmilitary activities, and salaries of such personnel paid out as an operating expense of such activities; that, while the funds from which your affiant was paid were classed as nonappropriated funds which were not appropriated and budgeted from the Congress but derived from activities not considered strictly military, such activities were and are provided for by law and regulation, and have long been considered to be important elements in maintaining morale and furthering the comfort and well-being of the military forces of the United States and are, therefore, an intimate part of the Armed Forces, regardless of the difference in which such funds are accounted for and eventually disposed of.

3. That your affiant is informed and believes that United States Army Regulation 210–50 required that civilian employees of nonappropriated activities be afforded protection against disability, which regulation is in the following language:

"Nonappropriated fund activities employing civilian personnel will provide workmen's compensation and employer's liability insurance with benefits not less than those required by laws of the State in which activities are located."

That she is further informed and believes that the application of such regulation by the Far East Command was subject to the control of the Commander in Chief of the Command, that there was no specific regulation applicable to said Command, and that she is informed and believes, and has been so advised that no provision was made to implement the aforesaid order and no protection afforded civilian employees of nonappropriated fund activities; that prior to employment of this affiant by United States Army at Tokyo she was employed by the American Red Cross, and when she was released by this organization as being a surplus employee she obtained permission to apply for employment with the Army post exchange at Tokyo, and was informed and believes that the American Red Cross required written assurance that she was fully protected in a manner similar to that provided by the Army regulation cited above, although she does not know whether such written assurance was ever given, nor did she at that time have reason to believe that she was not protected in the same manner as any other governmental employee paid from appropriated funds.

4. That on or about Labor Day 1950 this affiant became ill, suffering abdominal pains, and was treated at the Army dispensary in Tokyo, and was able to return to work in about 2 weeks; that thereafter on or about the 2d day of November 1950 the symptoms recurred and affiant reported to the Tokyo dispensary from which she was immediately assigned to Tokyo Army Hospital as an emergency surgical case; that upon admission to Tokyo Army Hospital it was found that, in addition to the pain, she was suffering from fever and infection, and treatment was undertaken to prepare her for surgery, during which time she was administered 44 shots of streptomycin as a part of her treatment, which covered a period of approximately 11 days; that following such treatment she was advised that the infection and fever symptoms had cleared sufficiently, treatment was stopped, and she was told that she should get out of bed and attempt to build up strength preparatory to surgery. At this time affiant noticed the first signs of the disability from which she now suffers, consisting of a queer feeling in her head and difficulty n walking and maintaining her balance, which she attributed to weakness;

That on November 21, 1950, she underwent surgery, described as hysterectomy, and following the operation, to prevent further infection medications were resumed for a period of 7 days, during which she received 28 shots of streptomycin in a period of 18 days; that she was thereafter discharged from the hospital, her original symptoms cleared up without complication, but that she retained blurred vision, an unsteady walk, and the lack of balance and coordination. That on or about the 16th day of December 1950, affiant was referred to the Ear, Nose, and Throat Clinic, Tokyo Army Hospital, and underwent tests and examinations under the supervision of Lt. Col. J. A. Budetti, at that time Chief of Ear, Nose, and Throat Section, Tokyo Army Hospital, and consultant in otolarynogology, Far East Command, where it was determined that affiant had suffered total destruction and loss of sensation in the vestibular nerve, and labyrinth of both ears; that the diagnosis made at that time, based upon the treatment which she had received, was that her condition was due to the massive doses of streptomycin, which damaged each ear, that following convalescent leave she returned to her work on January 4, 1951, and continued on a part-time basis for approximately 1 month, when she resumed work on a full-time basis; that it became increasingly difficult, because of the condition which developed following her hospitalization and treatment in November 1950, to do the work which she had previously been able to handle, suffering constantly from dizziness, blurred vision and instability as the result of which she found it necessary to resign, and was separated from her employment with the Far East Command as of July 19, 1951.

5. Affiant further says that she was 47 years old at the time she underwent the surgery and accompanying treatments above described, and is now 50 years old; that ever since her hospitalization in November 1950, she has suffered from impaired vision and hearing, and particularly has difficulty in walking because of an almost complete lack of any sense of balance, and must use a cane whenever she attempts to travel more than a few steps or away from any fixed objects which she can use to maintain balance; that because of this condition, which is apparent to any person observing her, she became, and is, totally unemployable, and has been unable to obtain any sort of gainful employment since her separation from Government service on July 19, 1951; that because of her present

physical condition she is unable to lead a normal life or engage in normal activities, and must remain in her home much of the time because of her difficulty in walking and in coordination, and for the further reason her appearance in public is a source of embarrassment to affiant, due to her unstable gait, which has from time to time been attributed to excessive use of intoxicating liquor.

6. The undersigned further says that prior to the injuries which she sustained at Tokyo Army Hospital, and which she has been advised by competent medical authority is the result of the doses of streptomycin received in November 1950, she was robust and vigorous in health, was an experienced accountant and office manager, and was able to fill a position of responsibility and authority, as she did during her employment by United States Army in Japan, with no known physical defects, but that at the present time, because of her physical condition and appearance she is unable to obtain any employment for which she is fitted by training and experience, and she would be unable to carry on normal office routine which required any moving about or shifting her area of concentration from one detail to another, because of her unsteady vision and total lack of balance; that while it is possible she could perform some minor tasks, such as sitting at a machine in an industrial establishment, performing the same operation continuously, because of her age and physical condition this type of employment is not open to her and she has been unable to engage in any sort of gainful occupation.

Affiant further says she has had no means of support except the dissipation of her small inheritance and such savings as she had, and for over a year has relied upon the generosity of friends and contributions by charitable organizations to pay her extensive medical bills for treatments in an effort to achieve some measure of rehabilitation, which has been unsuccessful to date; that as a further and contributing cause to affiant's present condition is the psychological difficulty of having been transformed almost overnight from a vigorous and able woman, capable of earning a substantial living and accepting heavy responsibility, such as supervision and administration of a large office, and accounting for great sums of money, such as she did immediately prior to her illness, into a semi-invalid, with the physical manifestations normally attributable to old age at a time when if she had not become so disabled she would be in the prime of her life; that because of her physical condition and constant worry attendant as result of her disability and financial straits her entire emotional makeup has been permanently changed, and there is no possibility that she can ever again be considered a normal person or lead a normal life.

7. Your affiant presents this affidavit as her request that relief be granted her by the Congress of the United States by passage of an act of Congress awarding her a sum of money in lieu of the compensation which she would have received had she been subject to the Federal Employees' Compensation Act, taking into consideration her previous earning capacity, life expectancy, and the fact that she has no hope of every again being able to support herself, nor has she any relative upon whom she can rely for financial assistance.

Affiant further requests that her original application for relief under the Federal Employees' Compensation Act, forwarded under date of July 15, 1951, by Col. R. H. Chard, AGC, Civilian Personnel Officer, General Headquarters Far East Command, together with all enclosures, and including affidavits of lay persons who witnessed her physical change, assigned Case No. X-652907 by the Bureau of Employees' Compensation, Department of Labor, her civilian personnel record as an employee of the United States Army from November 12, 1947, to July 19, 1951, and all other supporting statements and affidavits by medical doctors and other persons be read and considered as a part of this affidavit and petition for the relief aforesaid, all of which documents affiant is informed and believes correctly state the basis upon which she seeks relief.

PAULINE H. CORBETT.

Pauline H. Corbett, affiant herein, states upon her oath that the allegations and matters set forth in the foregoing affidavit are true, except where she states the same to be upon information and belief, and where she states such matters on information and belief, she believes them to be true.

PAULINE H. CORBETT.

Taken, subscribed, and sworn to before the undersigned authority, this the 23d day of March 1954.

GEORGE W. WOOD,
*Notary Public in and for Kanawha County, W. Va.*

My commission expires March 5, 1964.

STATE OF KANSAS,
*County of Sedgwick, ss:*

This day came Joseph A. Budetti, M. D., who, being first duly sworn, deposes and says as follows:

That during the years 1950 to 1953, including the months of November and December 1950, he was Chief of Ear, Nose, and Throat Section, Tokyo Army Hospital, and consultant in otolaryngology for the Far East Command, United States Army, and as such had medical supervision over all patients admitted to the ear, nose, and throat clinic for treatment or observation at Tokyo Army Hospital, at Tokyo, Japan.

That Mrs. Pauline H. Corbett underwent observation and treatment at the said ear, nose, and throat clinic during the period of affiant's active duty as a member of the Medical Corps of the United States Army, affiant having been separated from the service in November 1953.

That at the request of Harry Scherr, Jr., attorney at law, Huntington, W. Va., affiant makes the following statement in the form of a letter to Mr. Scherr, dated January 19, 1954:

"JANUARY 19, 1954.

"Mr. HARRY SCHERR, Jr.,
*Attorney, First Huntington National Bank Building,*
*Huntington, W. Va.*

"DEAR MR. SCHERR: As you mentioned in your letter, the case of Mrs. Pauline Corbett is sufficiently unusual so that I can recall the essential features of the case even without available records. As I remember, Mrs. Corbett was sent down to the ENT clinic for consultation study after the signs of vestibular disturbances were noted. She had received a series of streptomycin shots for treatment of a pelvic or renal condition during her hospitalization at Tokyo Army Hospital. I cannot recall the dosage, but the dosage is not too important since case histories, reported since those early days of streptomycin experiences, have shown that some people with hypersensitivity can manifest toxic reaction to the streptomycin even with small or short courses of the medicine.

"I recall that, from the examination given by me and the ENT staff, this lady manifested complete loss of reaction to tests of her vestibular apparatus. She showed a definite loss of balance and difficulty in walking * * * a characteristic of people whose vestibular apparatus is not functioning and who must depend on their muscular (proprioceptive) and visual control. Because of her middle-age status, this adjustment is much more difficult to make than it would be in a young person. From my recollection, there was no question in my mind, at that time, as to the cause and effect and as to the severity of her disability produced by the streptomycin.

"I trust that you will be able to utilize the foregoing information in your attempts to obtain some legal aid for her. I think that the hospital records will probably confirm most of the facts of her case.

"Sincerely,

"JOSEPH A. BUDETTI, M. D.,
*"Formerly Chief of Ear, Nose, and Throat Section, Tokyo Army Hospital, Consultant in Otolaryngology for the Far East Command, 1950–53."*

That as outlined above affiant has an independent recollection of the case of Mrs. Corbett, but cannot recall the dates when he examined her, but based on information furnished by Mr. Scherr he believes that she was admitted to the ear, nose, and throat clinic on or about December 16, 1950. He has also examined, at the request of Mr. Scherr, WD AGO Form No. 8–24 (July 1, 1944) bearing Serial No. 5560, containing the name of Pauline Corbett in line 1, showing date of admission in line 9 as December 16, 1950, and believes that the same refers to the case of Pauline H. Corbett, which has been above referred to, and further believes that section 11 of said form is probably the writing of an assistant in that time, although there is no means of further identifying the same. Affiant further says that his identification of this form is based upon the representation of said Harry Scherr, Jr., that the same was furnished by the Department of the Army, Office of the Adjutant General, Kansas City Records Center, Kansas City, Mo., as a copy of part of the medical and clinical records concerning the hospitalization treatment at Tokyo Army Hospital of the said Pauline H. Corbett.

Affiant further says that he has not seen Mrs. Corbett since she left Tokyo Army Hospital, at which time she was disabled due to the condition of her health hereinabove set forth; and that prior to her departure from Tokyo affiant, under date of May 21, 1951, gave Mrs. Corbett, for her use in obtaining berthing and

feeding facilities suitable to her physical condition, a note upon a prescription blank, written and signed by him in his own hand and signed by him, in the following words:

"MAY 21, 1951.

"Miss Pauline H. Corblett has suffered a disturbance of balance which warrants special consideration in regard to berth and feeding facilities. She should have a minimum of stair climbing.

"J. A. BUDETTI, M. D.
*"Chief E. N. and T., Tokyo Army Hospital Medical Corps."*

The undersigned further says that he understands that this affidavit will be used in support of a claim filed by the said Pauline H. Corbett against the United States Government because of disability resulting from her illness and subsequent treatments at Tokyo Army Hospital, and that the statements made herein are as fair and impartial as can be made, based upon affiant's recollection of the case, without having examined the original records of reexamined Mrs. Corbett.

Dated at Wichita, Kans., this the 15th day of March 1954.

JOSEPH A. BUDETTI, M. D.

Taken, subscribed and sworn to before me, and given under my hand and notarial seal, this the 15th day of March 1954.

My commission expires June 28, 1954.

[NOTARIAL SEAL] ESTHER VANCE,
*Notary Public in and for the County of Sedgwick, State of Kansas.*

STATE OF WEST VIRGINIA,
*County of Cabell, ss:*

The undersigned, W. K. Marple, being first duly sworn, says as follows:

1. That he is a medical doctor, duly qualified as a specialist in the practice of medicine as the same relates to eye, ear, nose, and throat, licensed in the State of West Virginia, and maintains his offices at Suite 400 First Huntington National Bank Building, Huntington, W. Va.

2. That on January 27 and 29, 1954, Pauline H. Corbett, 1303A Lewis Street, Charleston, W. Va., was examined in his office, and that pursuant to such examination he made the following report and findings:

On the first visit, I examined the patient with reference to her major complaint of severe persistent vertigo which had existed since November 1950, at which time she had received approximately 11 to 18 days' course of streptomycin therapy for a kidney infection. The patient stated that she also had experienced some diplopia and nystagmus and experienced difficulty in walking. There was no associated nausea or vomiting.

Examination revealed the vision in the right eye to be 20/25 correctable to 20/20 Jaeger I. The vision in the left eye 20/30 correctable to 20/20 Jaeger I. There was no evidence of any nystagmus at this time and there was no indication of any diplopia. The eye examination was essentially negative. Nares and sinuses were normal. Pharynx and larynx were normal. Ear canals were clear and tympanic membranes intact. Audiogram revealed the hearing to be slightly diminished bilaterally but could be considered to be within normal limits. Caloric stimulation of the inner ear with ice-cold water revealed no response on the right side and only a slight reaction to stimulation on the left side. On the second visit on January 29, 1954, examination was performed by my partner, Dr. M. J. Thomas. Audiogram was repeated and caloric stimulation tests repeated with copious quantities of ice-cold water. Dr. Thomas also noted that there was one degree of right hypophoria which was evident by the Maddox Rod examination but still no evidence of any diplopia. The results of the second examination were essentially the same as on the first visit.

It is Dr. Thomas' and my opinion that this patient has a definite permanent impairment of the function of the vestibular nerve bilaterally. This type of condition could be directly related to streptomycin therapy.

3. That he is informed and believes, and it is therefore his opinion, Mrs. Corbett would have a very limited opportunity for employment, that her age (50 years) and obvious physical impairment would be a deterring factor to a prospective employer, and to this extent he would consider her unemployable, and it is his further opinion that Mrs. Corbett's condition is permanent and no future improvement is to be anticipated.

4. That he understands that this affidavit is to be filed in support of a claim of Mrs. Corbett for compensation by an act of the Congress of the United States and that the facts and matters contained herein are true to the best of his knowledge, information and belief.

W. K. MARPLE.

The undersigned, M. J. Thomas, being first duly sworn, says that he is a medical doctor and the same Dr. M. J. Thomas referred to in the foregoing affidavit of W. K. Marple, and further states that he concurs in the diagnosis and conclusions regarding Pauline H. Corbett.

M. J. THOMAS.

Taken, subscribed and sworn to by W. K. Marple and M. T. Thomas before the undersigned authority, this 29th day of March 1954.

My commission expires August 9, 1956.

[SEAL]

HARRY SCHERR, Jr.,
*Notary Public, Cabell County, W. Va.*

POWER OF ATTORNEY

I, Pauline H. Corbett, of 1303A Lewis Street, Charleston, W. Va., do hereby constitute and appoint Harry Scherr, Jr., attorney-at-law, Huntington, W. Va. as my true and lawful attorney-in-fact, to represent me and to act in my place and stead, except as my be prohibited under the laws of the United States, in all matters relating to my request for relief and payment of compensation by the United States Government for injuries sustained while a patient at Tokyo Army Hospital, Tokyo, Japan, in November 1950, being at that time a civilian employee of United States Army, and authorize my said attorney to appear before any committee of Congress, and to examine any documents or records connected with my governmental service, except as may be prohibited by law.

PAULINE H. CORBETT.

Acknowledged before the undersigned authority this the 23d day of March, 1954.

[SEAL]

GEORGE W. WOOD,
*Notary public in and for Kanawha County, W. Va.*

My commission expires March 5, 1964.

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Calendar No. 1941

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1921

# JAMES C. HAYES

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 4026]

The Committee on the Judiciary, to which was referred the bill (H. R. 4026) for the relief of James C. Hayes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

### AMENDMENT

Page 2, line 6, strike out the words "in excess of 10 per centum".

### PURPOSE

This proposed legislation, as amended, is to pay the sum of $880.68 to James C. Hayes for the loss of personal property by fire on June 17, 1953, while such property was being shipped by the Army from Fort Richardson, Alaska, to Fort Sam Houston, Tex. The Secretary of the Army in his report dated April 13, 1955, gives in detail the history of the proposed legislation. Therefore, your committee concurs in the recommendation of the Army and the bill is amended accordingly.

### STATEMENT

The statement relative to the above legislation is contained in House Report No. 651, and is set forth in the report of the Department of the Army which is as follows:

DEPARTMENT OF THE ARMY,
*Washington, D. C., April 13, 1955.*

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,*
*House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of the Army for the views of the Department of the Army with respect to H. R. 4026, 84th Congress, a bill for the relief of James C. Hayes.

The Department of the Army favors the above-mentioned bill provided it is amended as hereinafter recommended.

The bill provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to James C. Hayes, captain, Medical Corps, United States Army, of Passaic, New Jersey, the sum of $2,192.69. The payment of such sum shall be in full settlement of all claims of the said James C. Hayes against the United States arising out of the destruction of his personal property by fire on June 17, 1953, while such property was being shipped by the United States from Fort Richardson, Alaska, to Fort Sam Houston, Texas. The said James C. Hayes has recovered the maximum of $2,500 allowed under the Military Personnel Claims Act of 1945 and the loss incurred in excess of that amount ($2,192.69) cannot be recovered under that Act."

James Clark Hayes (referred to in H. R. 4026 as James C. Hayes) was born on October 10, 1923, at Toronto, Canada, and became a citizen of the United States by naturalization on January 16, 1951, certificate No. 6897681, United States District Court, Eastern District, Brooklyn, N. Y. He was married to Mary McCormack Hayes and has three minor children, namely: James Frederick Hayes, David Richard Hayes, and Margaret Pamela Hayes. James C. Hayes served in the United States Navy as an apprentice seaman from May 13, 1943, until January 22, 1946. He was commissioned as a captain, Medical Corps, United States Army, on June 3, 1951, and was assigned service number O2041308. Captain Hayes received an appointment as captain in the Medical Corps, Regular Army of the United States, in October 1952, and was assigned service number O68013.

The records of the Department of the Army show that James C. Hayes, whose home address is 121 Gregory Avenue, Passaic, N. J., was, on April 21, 1953, assigned to the Medical Company, 196th Infantry Regiment, and was stationed in Anchorage, Alaska. He is presently on duty at the Brooke Army Hospital, Fort Sam Houston, Tex.

It appears that on or about April 21, 1953, the personal effects of Captain Hayes were delivered into the custody of Army authorities at Anchorage, Alaska, for packing, crating, and shipment by rail to the port of Whittier, Alaska, thence on to the United States by military water surface transportation, pursuant to competent orders. On June 17, 1953, all of Captain Hayes' personal property was destroyed by fire at the port of Whittier, Alaska.

On December 11, 1953, Captain Hayes filed a claim with the Department of the Army in the amount of $4,692.69, for the damages sustained by him as the result of the loss of his personal property. This claim was considered by the Department and it was administratively determined that the total damage sustained amounted to $3,380.68, after making necessary deductions for depreciation and other necessary allowances.

Acting under the provisions of the Military Personnel Claims Act of 1945 (59 Stat. 225; 31 U. S. C. 222c), as amended by the act of July 3, 1952 (Public Law 439, 82d Congress; 66 Stat. 322), the Department of the Army, on October 14, 1954, allowed the claim in the sum of $2,500, the statutory limit, and a check in that amount has been forwarded to him. After the making of said payment there remains a balance of damages sustained by the claimant in the sum of $880.68, for which he has not been compensated. There is no method by which he may be reimbursed for this loss except through the enactment by the Congress of a private relief bill for his benefit.

Inasmuch as Captain Hayes has a wife and three minor children and the loss sustained by him was not caused by any fault on his part, but occurred while his personal effects were in the custody of the Government, it is believed that it would create an undue hardship upon him if he should be required to sustain all damages in excess of the amount already paid to him. It is, therefore, the view of the Department of the Army that under the facts and circumstances in this case Captain Hayes is justly and equitable entitled to recover the full amount of damages sustained by him. The Department, accordingly, would have no objec-

tion to the enactment of H. R. 4026, if it should be so amended as to grant an award to the claimant in the sum of $880.68.

The cost of this bill, if approved as hereinbefore recommended, will be $880.68.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours

ROBERT T. STEVENS,
*Secretary of the Army.*

After a study of the foregoing, the committee is constrained to agree with the action of the House and recommends that the bill (H. R. 4026), as amended, be considered favorably.

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Calendar No. 1942

84TH CONGRESS, 2d Session } SENATE { REPORT No. 1922

# JAMES M. WILSON

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 4640]

The Committee on the Judiciary, to which was referred the bill (H. R. 4640) for the relief of James M. Wilson, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

### AMENDMENT

On page 2, lines 1 and 2, strike the words "in excess of 10 per centum thereof".

### PURPOSE

The purpose of the proposed legislation, as amended, is to pay the sum of $1,354.95 to James M. Wilson, of Coytesville, N. J., in full settlement of all claims against the United States for loss of household goods in a fire in the warehouse of J. E. Murray, at Geneva, N. Y., on August 28, 1952. Said goods were stored by the United States Air Force officials at Sampson, N. Y.

### STATEMENT

The facts in connection with this claim are set forth in House Report No. 742, to accompany H. R. 4640, as follows:

> The Department of the Air Force in its report to the committee, dated August 3, 1953, gives in detail the reasons for this legislation, and states that the amount of $1,354.95 is the correct amount Mr. Wilson is entitled to, and the bill has been amended accordingly. The report recommends general

legislation to cover such claims. A bill, H. R. 7068, was introduced and passed the House in the 83d Congress to remove the limitation, but no action was taken by the Senate. This committee is of the opinion that these claimants should not have to wait longer for their payment. Several private bills have been passed during this session to pay such claims. Therefore, favorable consideration is recommended.

The committee, after consideration, concurs in the conclusions reached by the House of Representatives and accordingly recommends that the bill, H. R. 4640, as amended, be considered favorably.

In the absence of evidence to substantiate any claim that legal services have been rendered, the bill has been amended so as to eliminate the payment of attorneys' fees in connection with the award therein provided.

Attached hereto and made a part hereof is the report of the Department of the Air Force, together with certain evidentiary data submitted in connection with this claim, including a complete inventory of the losses sustained by the claimant.

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DEPARTMENT OF THE AIR FORCE,
OFFICE OF THE SECRETARY,
*Washington, August 3, 1953.*

Hon. CHAUNCEY W. REED,
*Chairman, Committee on the Judiciary,*
*House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your request for the Department of the Air Force views with respect to H. R. 5651, a bill for the relief of James M. Wilson.

The purpose of H. R. 5651 is to pay James M. Wilson, of Coytesville, N. J., the sum of $4,249.84 in full settlement of all his claims against the United States for the loss of household goods in a fire in the warehouse of J. E. Murray, at Geneva, N. Y., on August 28, 1952. These household goods were stored by the United States Air Force officials at Sampson Air Force Base, N. Y.

Records available to this Department show that on May 14, 1952, Capt. James M. Wilson was ordered from Sampson Air Force Base, Geneva, N. Y., to Connally Air Force Base, Tex., and then to Randolph Air Force Base, Tex., for the purpose of attending training courses. He subsequently received permanent change of station orders on September 4, 1952, from Randolph Air Force Base to Lowry Air Force Base, Colo. He was authorized storage for his household goods at Government expense upon his departure from Sampson Air Force Base and his household goods were stored in the J. E. Murray warehouse on or about May 17, 1952. On August 24, 1952, the Murray warehouse was destroyed by fire which was ignited by a lighted match carelessly thrown into dry weeds behind the warehouse. The individual who was responsible for throwing the match was convicted by a court on a charge of endangering public safety. On August 28, 1952, Captain Wilson was notified that his personal property in storage had been destroyed along with the warehouse.

Captain Wilson filed a claim in the amount of $6,759.85 with the Department of the Air Force on December 5, 1952, under the provisions of the Military Personnel Claims Act (59 Stat. 225, 31 U. S. C. 222c), as amended. It was administratively determined that Captain Wilson had a valid claim in the amount of $4,854.95, less the amount of $1,000 which he had received from the Travelers Insurance Co. for fire insurance coverage on his household goods. However, the claim could only be approved in the amount of $2,500 since Public Law 439, 82d Congress, approved July 3, 1952, which amended the Military Personnel Claims Act, limited the jurisdiction of the act to that amount. Payment by check, dated April 21, 1953, in the amount of $2,500 was forwarded to Captain Wilson in settlement of his claim.

If the settlement of claims under the Military Personnel Claims Act was not limited to $2,500, this Department would consider that Captain Wilson has a valid claim in the amount of $1,354.95. There are other meritorious claims in this Department in excess of $2,500 which like Captain Wilson's can only be approved in that amount. This Department is therefore of the opinion that the enactment of H. R. 5651 would be discriminatory and might give rise to numerous private relief bills. It is considered that this is a matter more properly the subject for general legislation. A legislative proposal which would amend the Military Personnel Claims Act and obviate the necessity for bills such as H. R. 5651 is under consideration in the Department of Defense. This Department hopes that this proposal will be submitted to the Congress early in the next session.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

H. LEE WHITE,
*Assistant Secretary of the Air Force.*

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CLAIMS OFFICER'S REPORT

Date: 24 February 1953

Memorandum for commanding officer. (*See par. 23, AR 25–100*):
3415th Technical Training Wing, Lowry AFB, Denver, Colo.
Subject: Claim of (*Name, grade and Army serial number*)—
James M. Wilson, Captain, AO–676,900

1. As required by AFR 112–7 attached claim has been fully investigated and, together with supporting papers marked as Exhibits A through O, all in triplicate, is forwarded herewith.

2. The loss for which this claim is made occurred under the following circumstances (*brief narrative statement by claims officer*):

On 14 May 1952, Special Orders § 115 (Ex L) was issued by Headquarters, Sampson AFB and 3650th Air Force Indoctrination Wing, Sampson AFB, Geneva, New York, transferring Captain Wilson, but not authorizing movement of his dependents or household goods at Government expense. On 15 May 1952 Special Orders § 116 (Ex L[1]) was issued by the same headquarters as above, but only amending the status of Captain Wilson in regard to his transfer. An application (Ex H) was made by Captain Wilson on 15 May 1952 based on Special

Orders § 115, dated 14 May 1952 for temporary storage of his household goods. Insurance (Ex E) in the amount of $1,000 was taken out by the Claimant on 11 February 1952, covering his household goods and personal property, for fire and lightning plus extended coverage for a period of three years. On 13 September 1952 Captain Wilson received a copy of Special Orders § 207 dated 4 September 1952 (Ex F) from Headquarters, Randolph AFB, Randolph Field, Texas assigning him as instructor at Lowry AFB, Denver, Colorado. Upon receipt of the Special Orders from Randolph Field, Captain Wilson requested the Transportation Officer at Sampson AFB to forward his household goods and personal property to Denver, Colorado. In reply to this letter, the Commercial Transportation Officer at Sampson AFB, New York informed Captain Wilson by a form letter (Ex A) dated 28 August 1952 that his household goods and personal property were destroyed by fire on 24 August 1952 "while in the process of being packed" for shipment. A demand was made on the storage company which was subsequently denied by them. A demand was also made on the insurance company with the Claimant receiving the amount of $1,000 as a loan (Ex G).

3. The opinion of the Claims Officer as to credibility of statement of claim is as follows: Doubtful.

Exhibit "K" which purports to be an "Inventory" of United Van Lines, Inc., is apparently the only pertinent evidence as to loss which may have been prepared prior to the fire, and which was not destroyed. All other pertinent evidence, as to loss, was probably prepared by Captain Wilson, or under his supervision, after the fire. It is also noted that Exhibit "K" shows the condition of many articles as being "chipped" and "S & M," but Captain Wilson describes the condition of property in his claim as "Excellent", "Good", and "New". On the inventory no "special" notation is made as to valuable and expensive articles, such as a "fur coat". The claim form shows "mahogany" and "maple" furniture, however, Exhibit "K" shows items of furniture which appear to be identical to items shown on the claim form, as being "blue" and "stained".

4. The check list on the reverse hereof has been completed.

5. Recommendation: On the basis of my investigation, it is recommended that the claim be (*Strike out part not applicable*):

Approved under the provisions of subparagraph(s) 3b, AFR 112–7 in the amount of $2,500.00 (*if less than amount claimed, explain*).

Explanation: Ref Public Law 439, 82d Congress "Amendment to Military Personnel Claims Act of 1945". (Amounts shown in column "Amount Recommended by Claims Officer" show normal depreciation as based upon purchase price at time of acquisition or estimates furnished by Captain Wilson.)

Grade, branch, and organization:

James S. Hocker, 1st Lt, USAF, Asst. Wing Claims Officer.

Signature of claims officer:

JAMES S. HOCKER.

[First endorsement]

Date: 25 February 1953.

Official designation of forwarding Headquarters:
3415th Technical Training Wing, Lowry AFB, Denver, Colorado.

To: (*See par. 23f, AR 25–100*)
The Judge Advocate General, USAF, Washington 25, D. C.

1. Report of claims officer is approved, except as follows (*if any exceptions, state fully; otherwise state "No exceptions"*): No exceptions.
2. No items listed in the claim have been replaced in kind.
3. Forwarded for appropriate action.

Grade, branch and organization:
Joseph J. Redden, Major, USAF, Actg Staff Judge Advocate.
Approved by command of Brigadier General Sprague:
Signature of Commanding Officer or Judge Advocate:

JOSEPH J. REDDEN

*Schedule of property destroyed in the service*

| Quantity | Itemized description of articles | Month and year of purchase or other acquisition | Condition when lost | Purchase price or value at time of acquisition | Number of months since acquisition | Amount claimed | Amount recommended by claims officer |
|---|---|---|---|---|---|---|---|
| 1 | 3 Cushion Couch, Down | 9/50 | Exc | $600.00 | 20 | $525.00 | $478.35 |
| 2 | Down Cushion Easy Chairs | 9/50 | Exc | 400.00 | 20 | 300.00 | 300.00 |
| 1 | Castro Hide Away Couch | 6/51 | Exc | 250.00 | 11 | 225.00 | 225.00 |
| 1 | Wicker Easy Chair | 11/46 | Good | 62.50 | 66 | 47.50 | 43.75 |
| 2 | Leather Seat Side Chairs | 12/50 | Exc | 60.00 | 17 | 50.00 | 47.70 |
| 1 | Marble Top Mahogany Table, Antique. | 3/52 | Exc | 125.00 | 2 | 125.00 | 84.57 |
| 1 | Mahogany End Table | 2/51 | Exc | 25.00 | 15 | 20.00 | 20.00 |
| 1 | Mahogany Occ. Table | 2/51 | Exc | 42.50 | 15 | 35.00 | 31.91 |
| 2 | Table Lamps, China Base | 2/51 | Exc | 54.00 | 15 | 50.00 | 48.01 |
| 1 | Three-Way Floor Lamp | 2/51 | Exc | 32.50 | 15 | 27.50 | 27.50 |
| 1 | Custom Made Set Slip Covers & Drapes. | 10/51 | Exc | 350.00 | 7 | 300.00 | 300.00 |
| 1 | Upholstered Rocking Chair | 11/46 | Good | 73.50 | 66 | 65.00 | 43.36 |
| 1 | Carved, Antique Mantle Clock | 3/52 | Exc | 50.00 | 2 | 50.00 | 43.87 |
| 2 | Throw Rugs | 1/52 | Exc | 21.00 | 4 | 20.00 | 18.90 |
| 1 | Mahogany Double Bed | 2/51 | Exc | 107.50 | 15 | 100.00 | 78.62 |
| 1 | Four Drawer Mahogany Chest | 2/51 | Exc | 152.50 | 15 | 150.00 | 141.06 |
| 1 | Mahogany Night Table | 2/51 | Exc | 52.50 | 15 | 50.00 | 48.56 |
| 1 | Mahogany Vanity Stool | 2/51 | Exc | 37.50 | 15 | 35.00 | 34.69 |
| 1 | Double Size Hair Mattress | 2/51 | Exc | 145.00 | 15 | 120.00 | 120.00 |
| 1 | Set Coil Springs | 2/51 | Exc | 32.50 | 15 | 25.00 | 25.00 |
| 2 | Table Lamps Wood Base | 1/52 | Exc | 30.00 | 4 | 25.00 | 25.00 |
| 1 | Five Drawer Mahogany Chest | 11/46 | Refin<br>Exc | 137.50 | 66 | 125.00 | 96.25 |
| 1 | Elec. Alarm Clock | 6/51 | Exc | 15.00 | 11 | 12.50 | 12.50 |
| 1 | Card Table | 4/51 | Exc | 7.95 | 13 | 6.95 | 6.95 |
| 2 | Blankets, All Wool | 10/51 | Exc | 40.00 | 7 | 35.00 | 35.00 |
| 1 | Handmade, Heirloom Wool Afghan | 8/45 | Exc | 250.00 | 81 | 250.00 | 100.00 |
| 4 | Pair Curtains | 11/51 | Exc | 42.00 | 6 | 35.00 | 35.00 |
| 6 | Percale Sheets, Double | 4/51 | Exc | 27.00 | 13 | 21.00 | 21.00 |
| 12 | Percale Pillow Cases | 4/51 | Exc | 12.00 | 13 | 9.00 | 9.00 |
| 1 | Double Mattress Pad | 4/51 | Exc | 6.50 | 13 | 5.00 | 5.00 |
| 1 | Pr. Maple Bunk Beds | 3/52 | New | 79.50 | 2 | 79.50 | 77.51 |
| 2 | Single Hair Mattresses | 3/52 | New | 150.00 | 2 | 150.00 | 142.50 |
| 1 | Five Drawer Maple Chest | 3/52 | New | 95.00 | 2 | 95.00 | 92.62 |
| 2 | Maple Rocking Chairs | 12/51 | Exc | 45.00 | 6 | 40.00 | 40.00 |
| 1 | Maple Book Case | 12/51 | Exc | 30.00 | 6 | 25.00 | 25.00 |
| 2 | Single Mattress Pads, Plastic | 3/52 | New | 7.50 | 2 | 7.50 | 6.46 |
| 2 | Mattress Covers | 3/52 | New | 7.50 | 2 | 7.50 | 6.75 |
| 2 | Pictures | 12/51 | Exc | 9.00 | 6 | 8.00 | 8.00 |
| 2 | All Wool Blankets w/covers | 3/52 | New | 45.00 | 2 | 45.00 | 40.50 |
| 8 | Percale Sheets | 3/52 | Exc | 28.00 | 2 | 24.00 | 24.00 |
| 8 | Percale Pillow Cases | 3/52 | Exc | 8.00 | 2 | 6.00 | 6.00 |
| 2 | Chenille Bed Spreads | 4/52 | New | 17.50 | 1 | 17.50 | 16.62 |
| 1 | Pr. Chenille Drapes | 4/52 | New | 7.50 | 1 | 7.50 | 7.12 |
| 1 | Maple Dinette Table | 9/50 | Exc | 125.00 | 20 | 100.00 | 100.00 |
| 5 | Hitchcock, Antique Dining Room chairs. | 3/52 | Exc | 125.00 | 2 | 125.00 | 121.87 |
| 1 | Child's Table & Chairs Set, Chrome | 12/51 | Exc | 29.75 | 6 | 27.50 | 26.03 |
| 1 | Maple High Chair | 6/49 | Good | 17.50 | 35 | 12.50 | 11.86 |
| 1 | Set Dinner Dishes | 7/51 | Exc | 27.50 | 10 | 25.00 | 22.06 |
| 1 | Set Mixing Bowls | 9/51 | Exc | 3.75 | 8 | 3.00 | 2.53 |
| 1 | Set Silverware | 12/51 | Exc | 47.50 | 6 | 45.00 | 45.00 |
| 3 | Club Aluminum Pots | 11/46 | Exc | 36.00 | 66 | 25.00 | 8.20 |
| 1 | Club Aluminum Griddle | 11/46 | Exc | 12.00 | 66 | 10.00 | 2.72 |
| 1 | Club Aluminum Frying Pan | 11/46 | Exc | 12.00 | 66 | 10.00 | 2.37 |
| 2 | Cast Iron Fry Pan | 10/50 | Exc | 13.00 | 19 | 10.00 | 7.70 |
| 1 | Carving Board | 10/50 | Exc | 10.00 | 19 | 7.50 | ---------- |
| 1 | Antique Ironstone Platter | 3/52 | Exc | 10.00 | 2 | 10.00 | 9.50 |
| 12 | Cannon Towels | 4/52 | New | 33.00 | 1 | 33.00 | 29.70 |
| 2 | Cannon Bath Mats | 4/52 | New | 7.50 | 1 | 7.50 | 6.75 |
| 2 | Plastic Shower Curtains | 11/51 | Exc | 30.00 | 7 | 25.00 | 22.50 |
| 1 | Clothes Hamper | 7/51 | Exc | 12.50 | 10 | 10.00 | 9.85 |
| 1 | Auto. Wash. Machine | 12/51 | Exc | 312.50 | 6 | 300.00 | 285.00 |
| 1 | Clothes Rack | 11/46 | Exc | 7.50 | 66 | 5.00 | 1.97 |
| 1 | Ironing Board | 11/46 | Exc | 10.00 | 66 | 7.50 | 4.97 |
| 1 | Elec. Sewing Machine | 12/50 | Exc | 150.00 | 17 | 125.00 | 125.00 |
| 2 | Folding Chairs | 6/51 | Exc | 11.50 | 11 | 10.00 | ---------- |
| 1 | Set Outdoor Swings | 6/50 | Good | 27.50 | 23 | 22.50 | 18.00 |
| 1 | Da-Lite Movie Screen | 10/49 | Exc | 37.50 | 31 | 35.00 | 26.25 |
| 1 | Picnic Basket | 12/51 | Exc | 27.50 | 6 | 25.00 | 21.03 |
| 1 | Blackboard & Stand | 12/50 | Good | 10.00 | 17 | 7.50 | 4.80 |
| 1 | Tricycle | 12/51 | Exc | 27.50 | 6 | 25.00 | 22.00 |
| 1 | Express Wagon | 12/50 | Exc | 10.95 | 17 | 8.00 | 5.99 |
| 1 | Doll High Chair | 12/50 | Exc | 12.50 | 17 | 10.00 | 5.37 |
| 1 | Doll Carriage | 12/51 | Exc | 13.95 | 6 | 12.95 | 11.16 |

*Schedule of property destroyed in the service*—Continued

| Quantity | Itemized description of articles | Month and year of purchase or other acquisition | Condition when lost | Purchase price or value at time of acquisition | Number of months since acquisition | Amount claimed | Amount recommended by claims officer |
|---|---|---|---|---|---|---|---|
| 1 | Doll Wardrobe Chest | 12/50 | Exc | $3.98 | 17 | $3.50 | $3.16 |
| 1 | Doll Crib | 12/51 | Exc | 12.50 | 6 | 10.00 | 6.00 |
| 1 | Doll Cradle | 12/50 | Exc | 12.50 | 17 | 10.00 | 5.97 |
| 1 | Toy Kitchen Cabinet | 12/51 | Exc | 5.95 | 6 | 5.00 | 3.18 |
| 1 | Child's Electric Record Player | 12/51 | Exc | 22.50 | 6 | 20.00 | 17.95 |
| 1 | Toy Tractor and Trailer | 12/51 | Exc | 31.50 | 6 | 29.50 | 25.20 |
| 1 | Toy Crane | 12/51 | Exc | 16.50 | 6 | 15.00 | 11.80 |
| 1 | Toy Tank | 12/51 | Exc | 5.95 | 6 | 5.00 | 4.76 |
| 2 | Sets Bldg. Blocks | 12/50 | Exc | 8.50 | 17 | 7.50 | 5.10 |
| 2 | Teddy Bears | 12/51 | Exec | 16.50 | 6 | 15.00 | 12.72 |
| 3 | Costumed Dolls | 12/51 | Exec | 37.50 | 6 | 36.00 | 28.68 |
| 1 | Set Mech. Trains | 12/50 | Good | 7.50 | 17 | 5.00 | 2.18 |
| 2 | Snow Suits | 12/51 | Exec | 55.00 | 6 | 50.00 | 40.10 |
| 4 | Snow Suits | 12/50 | Good | 40.00 | 17 | 30.00 | 21.55 |
| 1 | Child's Wool Skirt | 3/52 | New | 5.95 | 2 | 5.00 | 3.18 |
| 1 | Child's Spring Coat & Hat | 3/52 | New | 15.95 | 2 | 15.00 | 12.76 |
| 6 | Pair Child's Winter Pajamas | 10/51 | Exc | 17.70 | 7 | 15.00 | 12.00 |
| 2 | Child's Wool Sleeping Garments | 10/51 | Exc | 22.00 | 7 | 20.00 | 17.52 |
| 12 | Child's Cotton Knit Suits | 10/51 | Exc | 15.00 | 7 | 12.00 | 9.60 |
| 12 | Pair Child's Corduroy Pants | 10/51 | Exc | 39.00 | 7 | 36.00 | 31.20 |
| 1 | Child's Velvet Dress | 1/52 | New | 16.95 | 4 | 16.50 | 13.56 |
| 2 | Child's Wool Bathrobes | 12/51 | Exc | 15.90 | 5 | 15.00 | 9.57 |
| 4 | Pair Child's Winter Slippers | 12/51 | Exc | 15.80 | 5 | 15.00 | 12.64 |
| 1 | Lady's Persian Lamb Fur Coat | 8/49 | Rem<br>Exc | 950.00 | 33 | 850.00 | 380.00 |
| 1 | Lady's Winter Cloth Coat | 8/51 | Exc | 110.00 | 9 | 100.00 | 80.00 |
| 1 | Lady's Spring Coat | 3/52 | New | 150.00 | 2 | 150.00 | 120.00 |
| 1 | Lady's Wool Bathrobe | 12/50 | Exc | 17.50 | 17 | 15.00 | 9.00 |
| 1 | Lady's Quilted Housecoat | 12/51 | Exc | 27.50 | 5 | 25.00 | 20.00 |
| 6 | Lady's Winter Dresses | 6/51 | Exc | 165.00 | 11 | 150.00 | 120.00 |
| 6 | Lady's Hats | 6/51 | Exc | 90.00 | 11 | 75.00 | 71.50 |
| 10 | Lady's Summer Dresses | 6/51 | Exc | 125.00 | 11 | 100.00 | 80.00 |
| 2 | Lady's Tailored Suits | 11/51 | Exc | 184.00 | 6 | 175.00 | 143.92 |
| 6 | Lady's Evening Gowns | 10/51 | Exc | 549.00 | 7 | 500.00 | 431.76 |
| 2 | Lady's Evening Bags | 10/51 | Exc | 37.50 | 7 | 35.00 | ---------- |
| 2 | Pairs Lady's Evening Shoes | 10/51 | Exc | 27.50 | 7 | 25.00 | 20.72 |
| 2 | Lady's Evening Slips | 1/52 | Exc | 17.00 | 4 | 15.00 | 9.57 |
| 6 | Lady's Slips | 1/52 | Exc | 27.00 | 4 | 25.00 | 19.10 |
| 1 | Man's Chronometer | 12/50 | Exc | 142.50 | 17 | 125.00 | 64.35 |
| 1 | Man's Overcoat | 11/51 | Exc | 127.50 | 6 | 125.00 | 92.00 |
| 3 | Man's Suits | 11/51 | Exc | 255.00 | 6 | 250.00 | 204.00 |
| 1 | Man's Jacket, Lined | 12/51 | Exc | 36.50 | 5 | 35.00 | 28.00 |
| 1 | Man's Hat | 12/51 | Exc | 15.00 | 5 | 15.00 | 12.00 |
| 6 | Shirts | 12/51 | Exc | 27.00 | 5 | 24.00 | 18.96 |
| 4 | Pairs Man's Knit Pajamas | 12/51 | Exc | 21.00 | 5 | 20.00 | 15.84 |
| 12 | Neckties | 6/51 | Exc | 21.00 | 11 | 18.00 | 14.40 |
| 1 | Man's Wool Bathrobe | 12/50 | Exc | 25.00 | 17 | 22.50 | 9.00 |
| 1 | Pair Man's Shoes | 2/52 | New | 15.00 | 3 | 15.00 | 13.70 |
| 5 | Cans Armours Frankfurters | 1/52 | New | 2.65 | 4 | 2.65 | 2.65 |
| 2 | Cans Armours Corned Beef Hash | 1/52 | New | .78 | 4 | .78 | .78 |
| 3 | Cans Dinty Moore Beef Stew | 1/52 | New | 1.71 | 4 | 1.71 | 1.71 |
| 3 | Pints Jars Hellmans Mayonnaise | 1/52 | New | 1.29 | 4 | 1.29 | 1.29 |
| 3 | Jars Stuffed Olives | 1/52 | New | 2.10 | 4 | 2.10 | 2.10 |
| 6 | Cans Anchovies | 1/52 | New | 1.20 | 4 | 1.20 | 1.20 |
| 5 | Cans Italian Tomatoes | 1/52 | New | 1.90 | 4 | 1.90 | 1.90 |
| 5 | Cans Italian Tomato Paste | 1/52 | New | .60 | 4 | .60 | .60 |
| 3 | Large Cans Del Monte Yellow Cling Peaches | 1/52 | New | 1.05 | 4 | 1.05 | 1.05 |
| 3 | Large Cans Del Monte Pears | 1/52 | New | 1.29 | 4 | 1.29 | 1.29 |
| 3 | Large Cans Del Monte Cherries | 1/52 | New | 1.25 | 4 | 1.25 | 1.25 |
| 3 | Large Cans Sliced Dole Pineapple | 1/52 | New | 1.05 | 4 | 1.05 | 1.05 |
| 10 | Cans Campbells Soup | 1/52 | New | 1.80 | 4 | 1.80 | 1.80 |
| 6 | Cans LeSeur Peas | 1/52 | New | 1.62 | 4 | 1.62 | 1.62 |
| 4 | Cans String Beans | 1/52 | New | .84 | 4 | .84 | .84 |
| 4 | Cans Pork & Beans | 1/52 | New | 1.00 | 4 | 1.00 | 1.00 |
| 6 | Jars Harry & David Strawberry Jam | 1/52 | New | 5.20 | 4 | 5.20 | 5.10 |
| 4 | Jars Harry & David Blackberry Jam | 1/52 | New | 2.80 | 4 | 2.80 | 2.80 |
| 4 | Cans Chicken of the Sea Tuna Fish | 1/52 | New | 1.72 | 4 | 1.72 | 1.72 |
| 10 | Pounds Sugar | 1/52 | New | 1.09 | 4 | 1.09 | 1.09 |
| | Total | | | | | 7,749.85 | 6,281.06 |
| | Less Amount Paid by Insurance Company | | | | | 1,000.00 | 1,000.00 |
| | Total | | | | | 6,749.85 | 5,281.06 |

[Longhand notation:] $2,500.00 pd. in acc with P. L. 439—Check No. 915788, Voucher No. 43698—21 Apr. 53.

Captain James M. Wilson, AO–676900, 2449 Third Street, Coytesville, New Jersey 6,749.85

Pursuant to orders (Exhibit L) the claimant was transferred from Sampson Air Force Base, New York, to Conally Air Force Base then to Randolph Air Force Base for training courses. He was not authorized to ship his household goods but was authorized storage at Government expense. While in storage at the J. E. Murray Warehouse, Geneva, New York, the claimant's property was destroyed by fire that destroyed the warehouse. The claimant carried insurance in the amount of $1,000.00 on the property. Claim is asserted for the damage sustained less the amount collected from the insurance company. The claim is found allowable in the amount of $3,854.95 after deducting the amount of insurance collected, except for the statutory limitation of $2,500.00, as provided in Public Law 439, 82d Congress.

[Longhand notation:]

$4, 854. 95
−1, 000. 00 Ins payment

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$3, 854. 95
−2, 500. 00 PL 734 payment

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$1, 354. 95 unpaid balance
[End notation.]

Par 3b (1)

2,500.00

SHANNON C. TRUMBO.

JAMES LYNCH
*Administrative Assistant*

Approved:
VIRGINIA A. HARDY,
*Lt Colonel, USAF,*
*Assistant Chief, Claims Division.*

○

# Calendar No. 1943

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1923

## MRS. ELLA MADDEN AND CLARENCE E. MADDEN

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

# REPORT

[To accompany H. R. 5237]

The Committee on the Judiciary, to which was referred the bill (H. R. 5237) for the relief of Mrs. Ella Madden and Clarence E. Madden, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill, as amended, do pass.

### AMENDMENT

On page 2, lines 7 and 8, strike the words "in excess of 10 per centum thereof".

### PURPOSE

The purpose of the proposed legislation is that the Secretary of the Treasury is authorized and directed to pay out of any money in the Treasury not otherwise appropriated, (1) to Mrs. Ella Madden, of Lawton, Okla., the sum of $15,000, in full settlement of all claims of the said Mrs. Ella Madden against the United States on account of the death of her two sons, Robert and Jackson C. Annis, resulting from the explosion of a rifle grenade which had been found by these boys and which apparently had come from nearby Fort Sill, Okla., and (2) to Clarence E. Madden, of Lawton, Okla., the stepfather of Robert and Jackson C. Annis, the sum of $1,950.21, in full settlement of his claim against the United States for reimbursement of hospital, funeral, burial, and other expenses incurred by him on account of the injuries and death of the said Robert and Jackson C. Annis.

STATEMENT

The evidence in this case shows that on January 10, 1953, at approximately 11:30 a. m., Robert L. and Jackson C. Annis, 6 and 8 years of age, respectively, sustained serious personal injuries as a result of the explosion of an antitank rifle grenade. They were the sons of Mrs. Ella Madden and the stepsons of Clarence E. Madden, and had been playing with this grenade about 75 feet to the rear of their home at 2408 Atlanta Street, Lawton, Okla., approximately a mile from the Fort Sill Military Reservation. The children were taken immediately to Memorial Hospital in Lawton by a neighbor and Mrs. Madden. The older boy was found to be dead upon arrival at the hospital and an examination revealed, in addition to a multitude of smaller wounds, a large perforating wound of the anterior chest wall sufficient to cause death. Robert Annis had sustained a severe laceration of the small intestine, blast injury of the lungs, and multiple penetrating wounds of the trunk and extremities and, as a result thereof, he expired on January 18, 1953. The margins of the wounds incurred by both children were burned, indicating that the explosion had occurred at close range.

Immediately after the explosion, the police department at Lawton and Army authorities at Fort Sill were notified. The identity of the missile was determined from fragments removed during an operation on the younger child and from other evidence, including a fin assembly, found at the site of the explosion. Although there were no witnesses to, or at the scene of, the accident, it appears that the children were burying the grenade, or had buried it and were attempting to drive it further into the ground, when it detonated.

Army authorities canvassed the neighborhood and schools in the area where the explosion occurred, using a practice type rifle grenade for identification purposes. This investigation revealed that numerous children in the vicinity had seen or had been playing with a grenade, similar to the one detonated, at various times over a period of approximately 3 weeks prior to the accident. Sometime before Christmas 1952, the children of Maj. Arthur C. Meier, a neighbor of Mr. and Mrs. Madden, had been playing with an object that appeared to be a practice or a dummy rifle grenade. On January 16, 1953, Major Meier stated that his younger son, Frank—

had mentioned the grenade to schoolmates and some of them had stated that they had, on occasion, gone just inside gate 4 (at Fort Sill), picked up and brought home "shells," some of which were like what Frank described.

Although it appears that no medical expenses were incurred for the treatment of the children, records of the Department show that the following expenses have been incurred and paid by Mr. Clarence E. Madden as a result of this accident:

| | |
|---|---|
| Hospital expenses | $319.00 |
| Funeral and burial expenses | 1,339.21 |
| Proportionate part of 4-grave cemetery lot costing $125 | 62.50 |
| Family monument for lot | 229.50 |
| Total | 1,950.21 |

The Department of the Army states that after a careful consideration of all the evidence in this case, the Department of the Army is of the opinion that compensation in a reasonable amount should be

granted on account of the fatal injuries sustained by Robert L. and Jackson C. Annis in the accident of January 10, 1953, and that reimbursement should be made for the expenses incurred as a result thereof. However, an award in the amount of $25,000 appears to be somewhat excessive.

In Oklahoma, wherein this incident occurred, the measure of parents' damages for the death of a minor child is their pecuniary loss alone (12 Okla. St. 1941, sec. 1053; *National Tank Co.* v. *Scott*, 130 P. 2d, 316, 191 Okla. 613 (Sup. Ct. Okla. 1942)), and although there is no statutory limit on the amount recoverable (Oklahoma constitution, art. XXIII, sec. 7), it is measured by such amount as will compensate the parents for the loss of the child's services to the time of his majority (*Hathaway* v. *Beatley*, 127 F. Supp. 634 (W. D. Okla. 1955); *Chicago, R. I. & P. Ry. Co.* v. *Dean*, 15 P. 2d 595, 15 Okla. 274 (Sup. Ct. Okla. 1932); *Shawnee Gas & Electric Co.* v. *Motesenbocker*, 138 Pac. 790, 41 Okla. 454 (Sup. Ct. Okla. 1914)). Hospital, medical, and funeral expenses are included in the amount recoverable (*Thompson* v. *Cooper*, 135 P. 2d 52, 192 Okla., 240 (Sup. Ct. Okla. 1943)). However, regarding the exact measure of damages in a particular case, a United States circuit court of appeals in Oklahoma (*Earl W. Baker & Co.* v. *Lagaly*, 144 F. 2d 344 (10th Cir., 1944)), in ruling upon the question of whether damages in the amount of $5,000 for the death of a 6-year-old child were excessive, stated:

> The amount of damages properly recoverable in a case of this kind is incapable of exact mathematical demonstration. It is a matter of reasonable approximation having its basis in a proper consideration of all relevant factors.

In the instant case, considering the ages of these boys at the time of death, and the pecuniary loss to their parents under criteria established by the courts in Oklahoma, it is the view of the Department of the Army that an award to Mrs. Ella Madden in the amount of $7,500 for the death of each boy would be fair and reasonable and clearly not excessive. The Department is of the further view that reimbursement should be made in the amount of $1,950.21, for the amount of expenses incurred, as disclosed by records of the Department, in connection with the hospitalization, funeral, and burial of these children. These awards amount to the sum of $16,950.21.

After a review of the facts in the appendages hereto attached, the committee is constrained to concur in the action of the House in its belief that this claim is meritorious. It would seem to be apparent that the proper supervision of explosive materials by the party or parties entrusted with such supervision allowed these minor children to obtain a dangerous instrumentality. While it is hard for the committee to actually determine how the grenade came into the hands of the children the committee is of the opinion that the nature of this extrahazardous occupation was such as to require the highest degree of duty and care on the part of the Government to guard against just the result here complained of. The degree of care should be high and the negligence slight in order to render liability on the part of the Government. The committee finds that the degree of care imposed was not used and even if the negligence was slight the Government should accept responsibility for this unfortunate tragedy.

Precedent for favorable consideration is to be found in S. 857 83d Congress, Private Law 424, for the relief of Robert L. Hilton.

**The committee therefore recommends that the bill, H. R. 5237, be considered favorably.**

DEPARTMENT OF THE ARMY,
*Washington, D. C., November 8, 1955.*

Hon. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,*
*House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your letter inclosing a copy of H. R. 5237, 84th Congress, a bill for the relief of Mrs. Ella Madden, and requesting a report on the merits of the bill.

The Department of the Army would have no objection to the above-mentioned bill provided it is amended as hereinafter recommended.

This bill provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Mrs. Ella Madden, of Lawton, Okla., the sum of $25,000. The payment of such sum shall be in full settlement of all claims of the said Mrs. Ella Madden on account of the death of her two sons, Robert and Jackson C. Annis, resulting from the explosion of a rifle grenade which had been found by these boys and which undoubtedly had been brought into the town by some member of the United States Army stationed at nearby Fort Sill, Okla."

The evidence in this case shows that on January 10, 1953, at approximately 11:30 a. m., Robert L. and Jackson C. Annis, 6 and 8 years of age, respectively, sustained serious personal injuries as a result of the explosion of an antitank rifle grenade. They were the sons of Mrs. Ella Madden and the stepsons of Clarence E. Madden, and had been playing with this grenade about 75 feet to the rear of their home at 2408 Atlanta Street, Lawton, Okla., approximately a mile from the Fort Sill Military Reservation. The children were taken immediately to Memorial Hospital in Lawton by a neighbor and Mrs. Madden. The older boy was found to be dead upon arrival at the hospital and an examination revealed, in addition to a multitude of smaller wounds, a large perforating wound of the anterior chest wall, sufficient to cause death. Robert Annis had sustained a severe laceration of the small intestine, blast injury of the lungs, and multiple penetrating wounds of the trunk and extremities and, as a result thereof, he expired on January 18, 1953. The margins of the wounds incurred by both children were burned, indicating that the explosion had occurred at close range.

Immediately after the explosion, the police department at Lawton and Army authorities at Fort Sill were notified. The identity of the missile was determined from fragments removed during an operation on the younger child and from other evidence, including a fin assembly, found at the site of the explosion. Although there were no witnesses to, or at the scene of, the accident, it appears that the children were burying the grenade, or had buried it and were attempting to drive it further into the ground, when it detonated.

Army authorities canvassed the neighborhood and schools in the area where the explosion occurred, using a practice type rifle grenade for identification purposes. This investigation revealed that numerous children in the vicinity had seen or had been playing with a grenade, similar to the one detonated, at various times over a period of approximately 3 weeks prior to the accident. Sometime before Christmas 1952, the children of Maj. Arthur C. Meier, a neighbor of Mr. and Mrs. Madden, had been playing with an object that appeared to be a practice or a dummy rifle grenade. On January 16, 1953, Major Meier stated that his younger son, Frank, "had mentioned the grenade to schoolmates and some of them had stated that they had, on occasion, gone just inside gate 4 [at Fort Sill], picked up and brought home 'shells,' some of which were like what Frank described."

Although it appears that no medical expenses were incurred for the treatment of the children, records of this Department show that the following expenses have been incurred and paid by Mrs. Clarence E. Madden as a result of this accident:

| | |
|---|---|
| Hospital expenses | $319.00 |
| Funeral and burial expenses | 1,339.21 |
| Proportionate part of 4-grave cemetery lot costing $125 | 62.50 |
| Family monument for lot | 229.50 |
| Total | 1,950.21 |

It does not appear that any civil action was instituted by Mr. or Mrs. Madden against the United States under the provisions of the Federal Tort Claims Act, as amended (28 U. S. C. 1346 (b)), for damages caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, and no claim has been filed with this Department as a result of this incident.

Although it appears certain that the rifle grenade involved originated at Fort Sill, Okla., there is no evidence of any negligent or wrongful act or omission of any employee thereat while acting within the scope of his employment and the manner in which this missile left Fort Sill and came into the possession of the Annis children cannot be determined. However, under the evidence available to this Department, it appears highly probable that the grenade was carried away from Fort Sill by one of the children who had entered the limits of such reservation at various times and brought home "shells" similar to the one which exploded and caused fatal injuries to the Annis boys. Under these circumstances, the Department of the Army believes that the death of these children resulted from an ultrahazardous noncombat activity of the Army for which the United States, in equity, properly may assume liability in spite of the intervening negligence of third persons. This view is supported by the American Law Institute's Restatement of the Law of Torts, pertinent provisions of which are quoted below:

*Section 519*

"§ 519. MISCARRIAGE OF ULTRAHAZARDOUS ACTIVITIES CAREFULLY CARRIED ON.

"Except as stated in §§ 521-524, one who carries on an ultrahazardous activity is liable to another whose person, land, or chattels the actor should recognize as likely to be harmed by the unpreventable miscarriage of the activity for harm resulting thereto from that which makes the activity ultrahazardous, although the utmost care is exercised to prevent the harm."

*Section 520*

"§ 520. DEFINITION OF ULTRAHAZARDOUS ACTIVITY.

"An activity is ultrahazardous if it—

"(a) necessarily involves a risk of serious harm to the person, land or chattels of others which cannot be eliminated by the exercise of the utmost care, and

"(b) is not a matter of common usage."

*Comment a*

"*a. Ultrahazardous activities distinguished from negligence and nuisance.*—The rule stated in this section is applicable to an activity which is of such utility that the risk unavoidably involved in carrying it on cannot be regarded as so unreasonable as to make it negligent to carry it on, * * *."

*Comment c*

"*c. Ultrahazardous subject matter.*—The storage and transportation of explosive substances are ultrahazardous activities because no precautions and care can make it reasonably certain that they will not explode and because the harm resulting from their explosion is almost certain to be serious."

*Section 522*

"§ 522. CONTRIBUTING ACTIONS OF THIRD PERSONS, ANIMALS AND FORCES OF NATURE.

"One carrying on an ultrahazardous activity is liable for harm under the rule stated in § 519, although the harm is caused by the unexpectable—

"(a) innocent, negligent or reckless conduct of a third person, or

"(b) action of an animal, or

"(c) operation of a force of nature."

*Comment a*

"*a. Rationale.*—The reason for imposing absolute liability upon those who carry on ultrahazardous activities is that they have thereby for their own purposes created a risk which is not a usual incident of the ordinary life of the community. If the risk ripens into injury, it is immaterial that it is made effective in harm by the unexpectable action of a human being, an animal, or a force of nature. This is so irrespective of whether the action of the human being which makes the ultrahazardous activity harmful is innocent, negligent or even reckless."

*Section 524*

"§ 524. EFFECT OF CONTRIBUTORY FAULT.

"(1) A plaintiff is not barred from recovery for harm done by the miscarriage of an ultrahazardous activity caused by his failure to exercise reasonable care to

observe the fact that the activity is being carried on or by intentionally coming into the area which would be endangered by its miscarriage.

" (2) A plaintiff is barred from recovery for harm caused by the miscarriage of an ultrahazardous activity if, but only if,

"(a) he intentionally or negligently causes the activity to miscarry, or

"(b) after knowledge that it has miscarried or is about to miscarry, he fails to exercise reasonable care to avoid harm threatened thereby."

The conduct of Robert and Jackson Annis, who at the time of the incident were 6 and 8 years of age, respectively, is not considered to have been contributorily negligent under the circumstances of the instant case. In this regard, the Restatement of the Law of Torts, section 464, states:

"§ 464. STANDARD OF CARE DEFINED.

"(1) Unless the plaintiff is a child or an insane person, the standard of conduct to which he should conform is the standard to which a reasonable man would conform under like circumstances.

"(2) The standard of conduct to which a child should conform is that to be expected from a child of like age, intelligence and experience."

After a careful consideration of all the evidence in this case, the Department of the Army is of the opinion that compensation in a reasonable amount should be granted on account of the fatal injuries sustained by Robert L. and Jackson C. Annis in the accident of January 10, 1953, and that reimbursement should be made for the expenses incurred as a result thereof. However, an award in the amount of $25,000 appears to be somewhat excessive.

In Oklahoma, wherein this incident occurred, the measure of parents' damages for the death of a minor child is their pecuniary loss alone (12 Okl. St. 1941, sec. 1053; *National Tank Co.* v. *Scott*, 130 P. 2d 316, 191 Okl. 613 (Sup. Ct. Okl., 1942)), and although there is no statutory limit on the amount recoverable ((Okl. Const., art. XXIII, sec. 7), it is measured by such amount as will compensate the parents for the loss of the child's services to the time of his majority (*Hathaway* v. *Beatley*, 127 F. Supp. 634 (W. D. Okl., 1955); *Chicago, R. I. & P. Ry. Co.* v. *Dean*, 15 P. 2d 595, 15 Okl. 274 (Sup. Ct. Okl., 1932); *Shawnee Gas & Electric Co.* v. *Motesenbocker*, 138 Pac. 790, 41 Okl. 454 (Sup. Ct. Okl., 1914)). Hospital, medical, and funeral expenses are included in the amount recoverable (*Thompson* v. *Cooper*, 135 P. 2d 52, 192 Okl. 240 (Sup. Ct. Okl., 1943)). However, regarding the exact measure of damages in a particular case, a United States Circuit Court of Appeals in Oklahoma (*Earl W. Baker & Co.* v. *Lagaly*, 144 F. 2d 344 (10th Cir., 1944)), in ruling upon the question of whether damages in the amount of $5,000 for the death of a 6-year-old child were excessive, stated:

"The amount of damages properly recoverable in a case of this kind is incapable of exact mathematical demonstration. It is a matter of reasonable approximation having its basis in a proper consideration of all revelant factors."

In the instant case, considering the ages of these boys at the time of death, and the pecuniary loss to their parents under criteria established by the courts in Oklahoma, it is the view of the Department of the Army that an award to Mrs. Ella Madden in the amount of $7,500 for the death of each boy would be fair and reasonable and clearly not excessive. The Department is of the further view that reimbursement should be made in the amount of $1,950.21, for the amount of expenses incurred, as disclosed by records of this Department, in connection with the hospitalization, funeral, and burial of these children. These awards amount to the sum of $16,950.21.

Another bill, S. 476, 84th Congress, for the relief of Harold Swarthout and L. R. Swarthout, the purpose of which was to grant compensation for serious personal injuries sustained by a 10-year-old boy as the result of the explosion of an Army missile under circumstances somewhat similar to those in the instant case, and to reimburse his father for expenses incurred and to be incurred in connection therewith, was enacted on August 9, 1955, becoming Private Law 389.

It is noted that appearing in H. R. 5237 is the statement that the death of the sons of Mrs. Madden resulted from the explosion of a rifle grenade which had been found by these boys and "which undoubtedly had been brought into the town by some member of the United States Army stationed at nearby Fort Sill, Oklahoma." Although it appears certain that this grenade came from Fort Sill, there is a complete lack of evidence that it was brought therefrom by a member of the Army. On the contrary, the evidence indicates that it was carried away from the reservation by one of the children who occasionally had entered the limits thereof and brought home "shells" similar to the one involved. However, as hereinbefore shown, the chain of events by which this grenade left

Fort Sill and eventually was found by the Annis children cannot be determined definitely.

It appears that Mrs. Ella Madden, the mother of the deceased Annis children, is a proper person to receive an award in compensation for their death. However, records of this Department show that the hospital, funeral, and burial expenses incurred in connection therewith have been paid by Mr. Clarence E. Madden, the stepfather of the children. Therefore, for the purpose of accuracy it is recommended that, if H. R. 5237 is favorably considered by the Congress, the text thereof be amended to read as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, (1) to Mrs. Ella Madden, of Lawton, Oklahoma, the sum of $15,000, in full settlement of all claims of the said Mrs. Ella Madden against the United States on account of the death of her two sons, Robert and Jackson C. Annis, resulting from the explosion of a rifle grenade which had been found by these boys and which undoubtedly had come from nearby Fort Sill, Oklahoma, and (2) to Clarence E. Madden, of Lawton, Oklahoma, the stepfather of Robert and Jackson C. Annis, the sum of $1,950.21, in full settlement of his claim against the United States for reimbursement of hospital, funeral, burial, and other expenses incurred by him on account of the injuries and death of the said Robert and Jackson C. Annis: *Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000."

The Bureau of the Budget has advised that there is no objection to the submission of this report.

The cost of this bill, if approved as hereinbefore recommended, will be $16,950.21.

Sincerely yours,

WILBER M. BRUCKER,
*Secretary of the Army.*

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AFFIDAVIT OF FRANK MURPHY, LAWTON CITY POLICE DEPARTMENT

STATE OF OKLAHOMA,
*County of Comanche, ss:*

Frank Murphy, of lawful age, being duly sworn, deposes and says as follows:

On January 10, 1953, I was a member of the Lawton, Okla., City Police Department and in my capacity as police officer I investigated the explosion of a United States Government issue rifle grenade which occurred at approximately 11:30 a. m., January 10, 1953, in the backyard of the home of Mr. and Mrs. Clarence Madden, 2408 Atlanta Street, Lawton, Okla.

This explosion resulted in the death of Robert Annis, age 6, and Jackson C. Annis, age 8, sons of Mrs. Ella Madden.

I questioned Maj. A. C. Myers, then on active duty at Fort Sill, Okla., who lived at 1416 North 24th Street, Lawton, Okla. His home is around the corner in the same block in which the Madden home is located. Maj. A. C. Myers' backyard is just across a ravine from the Madden backyard where the explosion occurred. Maj. A. C. Myers told me that his sons, Frank and Charles Myers, had brought a United States Government issue rifle grenade, that they found in a nearby park, home sometime just prior to Christmas 1952, and that he told them to get rid of it.

I questioned the two sons of Maj. A. C. Myers, Frank Myers and Charles Myers, who stated that after their father, Maj. A. C. Myers, had directed them to get rid of the rifle grenade they put it in the ravine behind their home, which is about 50 feet east of where the explosion occurred that killed the two sons of Mrs. Ella Madden. I made an immediate search of the ravine where the rifle grenade had been placed by the sons of Maj. A. C. Myers and the grenade could not be found. Obviously the same United States Government issue rifle grenade placed in the ravine by the sons of Maj. A. C. Myers had been found by the sons of Mrs. Ella Madden and subsequently exploded, causing the death of Jackson Annis and Robert Annis.

Attached to this affidavit are copies of the police reports which I made, dated January 10, 1953, marked "Exhibits A and B."

FRANK N. MURPHY.

Subscribed and sworn to before me this 16th day of April 1955.

[SEAL] VIVIAN HANNA, *Notary Public.*

My commission expires February 12, 1957.

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EXHIBIT A

LAWTON POLICE DEPARTMENT FOLLOWUP REPORT

JANUARY 10, 1953.

Case: Jack Annis and Robert Annis, 2408 Atlanta, Lawton, Okla.
Date: January 10, 1953.
Officer: Frank Murphy.
Report in detail.

Apparently the above two boys were burying a grenade or had buried it, and were trying to drive it into the ground when the grenade exploded. Jack Annis was fatally injured, dead on arrival at Memorial Hospital. Jack Annis was 8 years old. Robert's age is 6 years old. As near as could be determined at this time, the grenade was found in a park on Cheyenne Avenue sometime before last Christmas by Maj. A. C. Myers' two sons, Frank and Charles, of 1416 North 24th Street. Maj. A. C. Myers is stationed at Fort Sill, Okla. These two boys stated that they found the grenade in the park and took it home, later showed it to their father, and he advised them to get rid of it. They threw it into a ravine about 50 feet east of where the explosion occurred, just behind the Annis boys' home. A search of the ravine was made and the grenade the Myers boys threw away was not in the ravine; therefore the grenade involved in the explosion is considered to be the same. There were stakes driven into the ground around the place where the grenade exploded. Capt. Kenneth F. Brown and Capt. Bert Koch took the boys to the hospital. Addresses of above men were not obtained.

The two Annis boys are the sons of Mr. and Mrs. Clarence E. Madden, 2408 Atlanta, Lawton, Okla.

Report made by:

FRANK M. MURPHY.

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EXHIBIT B

LAWTON POLICE DEPARTMENT FOLLOWUP REPORT

JANUARY 10, 1953.

Case: Explosion in rear of 2408 Atlanta Avenue, Lawton, Okla.
Date: January 10, 1953.
Officers: Frank Murphy and Norman Garrison.
Continuing report.

Jack Annis was dead on arrival at Memorial Hospital. Robert Annis, brother of Jack Annis, was seriously injured and was reported to be in critical condition at last report, at 6 p. m., January 10, 1953.

Robert is 6 years old, and has stomach and lower intestine injuries. More information will follow.

Condition of Robert Annis as reported by Memorial Hospital at 10:30 a. m. Sunday morning, January 11, 1953, still critical.

10:30 a. m. Mooday morning, January 12, 1953, still critical.

11:40 a. m., January 13, 1953, hospital reported slight improvement in Robert's condition but still critical.

January 18, 1953, at 1:30 p. m., Robert Annis passed away.

Report ended.

GI's Offer Blood to Grenade Victim—Blast Killed Brother of Ex-Pittsburgh Boy

Lawton, Okla., January 12 (UP).—Six soldiers stood by last night to give blood transfusions to a former Pittsburgh boy, critically injured in a rifle grenade explosion.

The condition of Bobby Annis, age 6, remained very grave following surgery to remove larger chunks of the jagged metal.

His 8-year-old brother, Jack, was killed by the blast, apparently set off while they were trying to hammer the grenade into a hole in their backyard on Saturday.

Parents of the boys are Mr. and Mrs. Clarence Madden, who left Pittsburgh's South Side 4 years ago. Mr. Madden operates a used-car lot here, near Oklahoma City.

Police believed the grenade came from the Fort Sill military post north of the city. Neighborhood boys said it was found in a nearby park about 2 weeks ago by other boys who discarded it in a ditch.

Bobby clung grimly to life through transfusions of rare type B, Rh-negative blood from soldiers at nearby Fort Sill.

Mrs. Madden is the former Ella Gerhold.

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City Tragedy Brings Warning Against Handling Explosives

Six-year-old Bobby Annis, critically wounded Saturday when an antitank rifle grenade exploded, was reported some improved today in Memorial Hospital, where he is waging a fight for his life.

The Lawton child has survived thus far the blast which took the life of his 8-year-old brother, Jack. The brothers were playing with the deadly device near their residence, 2408 Atlanta. Their mother is Mrs. Clarence Madden.

Hospital attendants said young Bobby had a restless night, but this morning he appeared to be resting better and was able to take some nourishment.

His condition remained critical, but there was some encouragement that he may recover.

At Fort Sill, ordnance experts have positively identified the shell that figured in the tragedy. They identified it as an antitank rifle grenade, a standard item of ammunition in use at practically every Army camp in the Nation.

A statement on the investigation by military authorities was released through the Fort Sill Public Information Office.

The investigation was conducted by Lt. Thomas J. Girkout, Jr., commanding officer of the 61st Explosive Ordnance Disposal Squad, and Capt. J. G. Doka, ammunition officer of the Artillery Center

Lieutenant Girkout, whose primary mission at Fort Sill is the handling of unexploded ordnance, said that the grenade was probably a dud—a shell that had been fired but didn't detonate. He explained that this type of rifle grenade had been in use by the Army for a number of years.

Calendar No. 1944

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1924

# S. H. PRATHER ET AL.

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 5535]

The Committee on the Judiciary, to which was referred the bill (H. R. 5535) for the relief of S. H. Prather, Mrs. Florence Prather Penman, and S. H. Prather, Jr., having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

### AMENDMENT

Page 2, line 21, change the period to a colon and insert the following:

*Provided*, That no part of the amount appropriated in this Act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

### PURPOSE

The purpose of the proposed legislation, as amended, is to pay to S. H. Prather, of Americus, Ga., $5,000; to Mrs. Florence Prather Penman, $2,000; to S. H. Prather, Jr., $1,000; such sums to be in full settlement of all the claims of said claimants against the United States for property damage and personal injuries sustained by them, together with all hospital and medical bills incurred by them, arising out of a collision which occurred on August 6, 1935, when an automobile in which they were riding in Quitman, Ga., was struck by an automobile driven by Howard Hart, who was being pursued by an officer of the Internal Revenue Bureau.

A similar bill, H. R. 9357, passed both bodies in the 83d Congress, but received a pocket veto by the President on August 31, 1954.

The material facts gathered from the correspondence files and from Mr. Wilmeth's report appear to be as follows: On August 6, 1935, J. O. Steward, investigator, Alcohol Tax Unit, Internal Revenue Bureau, and W. A. Cato, a State officer, were traveling by automobile from Moultrie to Valdosta, Ga. Upon reaching a point about 3 miles east of Quitman, Ga., a car occupied by Howard Hart and William Hart, known as bootleggers, passed them. The officers detected a strong odor of whisky coming from the passing car. Upon seeing the officers, the bootleggers accelerated their speed. The officers turned and started in pursuit of the fleeing car, which was headed toward Quitman.

The officers pursued the bootleggers for about 2 miles at a rate of speed approximating 70 miles per hour. The bootleggers' car turned into a street in Quitman and speeded up to about 75 miles per hour. At a street intersection the car operated by the bootleggers collided with a new Studebaker sedan, driven by Mr. Stuart H. Prather, of Americus, Ga. In the car with Mr. Prather were his wife, son, and daughter, all of whom were injured, and his automobile was badly wrecked.

At the time the automobiles collided, the car in which the officers were traveling was approximately 100 yards away. The 2 bootleggers were arrested for violation of section 3450, Revised Statutes, and section 201 of the Liquor Taxing Act of 1934, and their car containing 43 gallons of illicit whisky was seized. Ambulances were secured promptly, and the injured members of the Prather family were immediately carried to the hospital at Quitman.

Special Investigator Wilmeth interviewed Dr. Stuart Prather, father of Stuart H. Prather. Dr. Prather stated that he and other physicians had made an examination of the injured persons, which showed that Stuart H. Prather suffered an injured back, a wrenched right hip, and severe shock; Mrs. Prather suffered contusions and shock; Mr. Stuart H. Prather's son suffered an injured back and broken rib; and the daughter, who was the most severely hurt, suffered a broken shoulder and a fractured skull.

The evidence showed that the bootleggers were being chased by the named officers and that at no time did the officers blow a siren, horn, or whistle of any kind, nor give any alarm whatever so as to indicate that it was a police car, nor did anything to give any traveler lawfully upon that highway any notice whatever that these officers had made that highway a veritable racetrack, competing against allegedly criminal offenders, and that the collision came to Prather and his family without notice, and as suddenly as a stroke of lightning.

The eyewitness account of the accident as described in the various documents in the file support the contention of the claimant that the accident was one which would not have resulted had the United States internal revenue officer exercised due diligence, caution, and had he adhered to the rule of reasonableness. There is no doubt had proper signals been given, those who were lawfully traveling on the highway would have been sufficiently alerted so that an accident might not have resulted. This was not the case. The internal revenue agent was intent upon tracking down a person whom he believed to be a violator of the law and threw all caution and reasonableness to the winds, proximately causing the damage and injury to the claimant.

The committee, after consideration of the facts, is of the opinion that equity requires some measure of compensation to these claimants

for the damages suffered in this accident, and believes that the awards provided in the bill, namely, $5,000 to S. H. Prather for the injuries he sustained to himself and to his property; $2,000 to his daughter, Florence, who is now Mrs. Arthur Penman, and $1,000 to S. H. Prather, Jr. are reasonable amounts, under all the facts and circumstances.

House Report No. 927, on H. R. 5535, indicates that the House Judiciary Committee has received information from the author of the bill that the President was not given all information as to the accident and that he would receive another bill with an open mind. Therefore, the House committee recommended favorable action on H. R. 5535.

In view of all the circumstances and the statement contained in the House report, the committee again recommends that the bill, H. R. 5535, as amended, be considered favorably.

Attached hereto and made a part hereof are departmental reports and certain evidentiary data relating to a similar bill of a previous Congress.

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CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
*Washington, D. C., May 21, 1954.*

DEAR COLLEAGUE: H. R. 6756 was introduced by my predecessor, Hon. Stephen Pace, 75th Congress, April 28, 1937. Said bill was for the purpose of paying S. (Stewart or Stuart) H. Prather, damages sustained by himself, his wife, his son and his daughter, plus the demolition of his new Studebaker sedan automobile, arising out of an automobile being driven by bootleggers at the rate of speed between 60 and 70 miles per hour over the public streets or highways in the city of Quitman, Ga.; said driving being inspired by reason of said bootleggers being chased over said streets or highways in said city of Quitman by an officer of the Federal Internal Revenue Department, the bootleggers' automobile striking the automobile of S. H. Prather, while the said Prather automobile was being operated upon its side of the street or highway in a lawful manner, with such force and violence that the automobile was completely destroyed; and the said S. H. Prather, his wife, his son, and his daughter receiving personal injuries. The above bill was adversely reported on June 4, 1937.

The claimant, in the above bill, has importuned me ever since I have been in Congress to introduce another bill in his behalf. Without looking into the record I naturally assumed that Mr. Prather had had what is figuratively known as his day in court, but because of frequent importuning I finally had Hon. Walter Lee locate the old records in the Archives and I have carefully read the entire evidence. The record is outstanding for its completeness of detail. I do not believe that I have seen a record, since serving on the Claims Subcommittee that is more exhaustive concerning the facts.

Without any criticism whatever I am at a loss to understand the unfavorable subcommittee action above referred to. I am convinced that a great wrong has been done Mr. Prather and that Mr. Prather should have proper reimbursement for the terrible injuries inflicted, and for that reason I am asking the members of our subcommittee to give me the benefit of their conclusions, that is, whether I am or am not correct in my views. I do not wish to embarrass my subcommittee by introducing a bill in behalf of Mr. Prather, unless the subcommittee is of the opinion that it should be done in the interest of justice.

The evidence shows the following facts: Howard Hart and William Hart were bootleggers of illicit liquors; J. O. Stewart was an investigator for the Alcoholic Unit of the Internal Revenue Department, and W. A. Cato was a State officer. It affirmatively appears from the record that each of these officers knew the bootleggers—the Harts; knew they had criminal records and a previous conviction for having illicit liquors; and, also, knew the Harts had no finances or property. (See report from the Acting Secretary of the Treasury dated February 20, 1936.)

On August 6, 1935, said Stewart and Cato were driving an automobile from Moultrie to Valdosta, Ga. Moultrie was, and is, the county site of Colquitt County and was then a city of approximately 12,000 people. Valdosta was, and is, the county site of Lowndes County and was then a city of more than 15,000

people, and is now a city of more than 30,000 people. Both of these cities, as was Quitman, Ga., which city later makes its appearance in the record and which was then a city of between five and eight thousand people, were known by this writer to be gateways for tourists, travelers and traffic to and from the State of Florida, as well as all being cities the country people traveled for miles to trade in.

The highway these officers were traveling upon was a road carrying a tremendous amount of human cargo and goods, all of which the writer knows to have been well known to these officers, the writer having known these officers intimately for many years and it is fair to assume that these officers were bound to know that an automobile in the year 1935, if of modern manufacture, was an exceedingly dangerous instrument if operated on that highway at 60 or more miles per hour. The writer thinks that a 1935 automobile traveling 60 or 70 miles per hour on a public highway was knowingly more dangerous than a 1954 automobile, equipped with modern braking, would be if operating at 100 miles per hour. The writer personally knows that Federal Officer Stewart was on that particular day thoroughly acquainted with the traffic and human cargo and denseness of population in all the areas referred to above or hereafter referred to, as Stewart lived in that area and constantly patroled and traveled the highways in that area.

The letter from the Acting Secretary of the Treasury above referred to shows the following facts: The above-named officers, while traveling in an automobile, the Federal officer driving at a point about 3 miles east of Quitman; a car occupied by the Harts (the bootleggers) passed them; the officers recognized the Harts and the Harts recognized the officers; the record saying "upon seeing the officers, the bootleggers accelerated their speed. The officers turned and started in pursuit of the fleeing car, which was headed toward Quitman. The officers pursued the bootleggers for about 2 miles at a rate of speed approximating 70 miles per hour. The bootleggers' car turned into a street in Quitman and speeded up to about 75 miles an hour. At a street intersection the car operated by the bootleggers collided with a new Studebaker sedan driven by Mr. S. H. Prather, of Americus, Ga. In the car with Mr. Prather were his wife, son, and daughter, all of whom were injured, and his automobile was badly wrecked."

That same letter says that Mr. Prather suffered "an injured back, a wrenched right hip, and severe shock; Mrs. Prather suffered contusions and shock; the son suffered an injured back and a broken rib; and the daughter, who was the most severely hurt, suffered a broken shoulder and a fractured skull." The automobile was completely destroyed in value.

Included in this record is a report made by F. F. Wilmeth, special investigator, Treasury Department, to the district supervisor, Alcohol Tax Unit, Bureau of Internal Revenue, Atlanta, Ga. On page 5 of that report, last paragraph, I quote:

"With reference to the personal injuries and property damages suffered by Mr. Stewart H. Prather and his family, it is thought that if possible some provision should be made either by special legislation, or otherwise, to compensate them for the losses sustained as the investigation showed the violators in the case to be without financial responsibility."

Mr. Wilmeth, in his report, page 2, paragraph 3, said:

"An examination of the wrecked car, which had been brought to Americus, Ga., appears to be a total loss and it seems remarkable that no loss of life resulted from the wreck."

Mr. Wilmeth's report, page 3, paragraph 2, showed that S. H. Prather suffered an injured back, a wrenched hip and severe shock; Mrs. Prather, contusions and shock; the small son, an injured back and a broken rib; the small daughter, a broken shoulder and fractured skull.

Attached to the record is a transcript of testimony taken in the Superior Court of Brooks County, Ga., the county in which the collision occurred, upon a trial wherein Howard Hart was tried on a criminal charge arising out of the collision, and that record is highly illuminating. That record shows S. H. Prather was driving on his side of the public highway in the city of Quitman at a lawful rate of speed, 20 to 25 miles per hour, when the bootleggers' car entered that public highway at 70 miles per hour and struck the automobile of Prather squarely in its middle.

The evidence showed that the bootleggers were being chased by the named officers and that at no time did the officers blow a siren, horn, or whistle of any kind, nor give any alarm whatever so as to indicate that it was a police car, nor did anything to give any traveler lawfully upon that highway any notice whatever that these officers had made that highway a veritable race track, competing against allegedly criminal offenders, and that the collision came to Prather and his family without notice, and as suddenly as a stroke of lightning.

The Acting Secretary of the Treasury, in his report of February 20, 1936, sought to exonerate the Federal officer, saying the officer was free of blame and was merely performing his duty "inasmuch as the officer was pursuing bootleggers for violation of the law committed in the officer's presence who were attempting to escape." That reasoning cannot be squared with the well settled law, nor even with the facts. That conclusion can only be explained as being a result of hysteria prevalent in prohibition days when possession of liquor was viewed as worse than murder, and to catch a bootlegger was of such importance that any end justified the means, and that every constitutional right of a defendant could be nullified. No crime was committed in the presence of these officers and there was no justification whatever for these officers to chase these men, who turned out after the collision to be bootleggers. The only scintilla of evidence to that effect is contained on page 1 of the Acting Secretary's report, paragraph 3, extracted from his files, which says that when the officers traveling upon a highway in an automobile passed the Harts' car on that highway traveling in an opposite direction, "the officers detected a strong odor of whisky coming from the passing car." The officers then turned and started pursuit of the bootleggers over one of Georgia's most heavily traveled highways, creating a danger to human cargo, lawfully upon that highway, comparable to a rifle range.

The evidence showed throughout even from sworn testimony delivered in the court under oath that the liquors the bootleggers possessed were in five wooden kegs and in the back of the automobile and that the liquor spilled only when the collision occurred and Officer Stewart, at the scene of the collision, destroyed the kegs and the liquor. It is extremely doubtful that the officers detected any whisky odor while passing the car of the bootleggers, if the bootleggers could be assumed to have any sense whatever. If the officers smelled liquor, any other traveler on the highway could have done likewise. It is highly doubtful that any bootlegger would have incurred such a risk. But, suppose the officers did smell the odor of liquor? Would that authorize a conclusion of law that a crime was then being committed in the presence of those officers? To answer that question is to answer it with a resounding "No."

Then the record contends that the Federal officers chased the bootleggers' car carefully and did not contribute to the injuries, saying the officers slowed down upon reaching the city limits of Quitman, but the undisputed testimony in the record demonstrates that it could not have been true.

The Acting Secretary's report, page 1, paragraph 4, says:

"At the time the automobiles collided, the car in which the officers were traveling was approximately 100 yards away."

How much closer could the officers' car be without endangering their own lives? Let's look at the unchallenged testimony, under oath, in the criminal case above referred to. Examine the testimony of Jack Atkinson, an eyewitness: Atkinson testified the Hart car was traveling 60 miles an hour and possibly more when the Prather car was struck, and that the Prather car was knocked fully 25 feet from the pavement; that he saw Mr. Stewart and another policeman take whisky out of the bootleggers' car and he was pretty sure the whisky was in 4 kegs. Atkinson testified he was 15 years of age and was standing on his front porch and saw everything that occurred, and that the Prather car was on the side of the road he was entitled to and was traveling around 25 miles per hour, and the accident happened "just like that."

On page 32 of said transcript Atkinson was asked:

"Now at the time all this happened what was the next thing that happened that you remember very distinctly; was there another car coming?

"Answer. Yes, sir.

"Question. There was another car coming?

"Answer. Yes, sir.

"Question. Tell the jury how fast that car was coming.

"Answer. About 60 miles an hour.

"Question. It was going about 60 miles an hour?

"Answer. Yes, sir.

"Question. And it came down Bartow Street, too?

"Answer. Yes, sir."

This evidence was with reference to the officers' car. The witness, Atkinson, testified that one of the officers was Mr. Stewart and both in plain clothes. Then the witness testified that when the officers got to the scene they ran over to the wrecked automobile and there was lots of liquor on the scene, the liquor being in kegs in the Plymouth automobile, and had burst and was on the ground, the liquor being in four kegs. That the liquor was in kegs was further established by the

testimony of A. T. Murphy, who testified that when he got to the scene Mr. Stewart had just finished bursting up the kegs of liquor and there were two 15-gallon kegs, one 10-gallon keg, and one 5-gallon keg, which Mr. Stewart got out of the car.

The statement of the defendant is included in the transcript and the defendant stated that he met Mr. Stewart on the highway and Mr. Stewart tore out behind him; and he did not know whether Stewart would shoot or not and he drove away and the wreck later ensued.

Reverting to the report made by Mr. Wilmeth, page 4, paragraph 2, there will be found the statement of Mrs. J. C. Atkinson, who operated a grocery store in Quitman at the street intersection where the accident occurred. Mr. Wilmeth says:

"She stated that she heard the crash and looked up in time to see the car containing Investigator Stewart and Deputy Sheriff Cato come to a pause fully under control at the scene of the accident.

Certainly, this testimony must be construed to the effect that upon Mrs Atkinson hearing the crash she looked up and saw the officers arrive at the scene and surely this must have been somewhat simultaneous with the crash. Included in Mr. Wilmeth's report is a statement from Mr. J. R. Newton, a clerk in the same grocery store, who said he saw the Hart car approaching at a rate of speed of approximately 70 miles an hour and that the car driven by Stewart was following about 1½ blocks away at a lower speed.

By referring to Georgia Code Annotated, title 68, section 301, the law of regulating speed in Georgia at the time of this collision was 40 miles per hour for motor vehicles equipped with pneumatic tires, and undoubtedly the officers and the Harts were violating the speed laws of the State, while Prather was in all respects complying with the traffic laws of Georgia.

Under the well-settled rules of law, were not the Government exempt from civil suit, there can be no doubt that the Government would have been a joint tort feasor, and liable to suit, jointly or severally and under the facts set out in this record should have been held liable in damage.

It is completely without lawful authority for an officer to shoot a man to prevent his escape while in the commission of a misdemeanor, or to commit any dangerous assault upon such person seeking to escape. Reckless conduct in the commission of an unlawful act, which in its nature is likely to produce death, has been graded in many States as murder where death ensues and assault with intent to murder where death did not ensue.

Mr. Stewart is well known to the writer and there is no doubt but what he was probably the most zealous prohibition officer this writer ever knew. He was a truthful man and entitled to respect, but nevertheless the writer cannot hold Mr. Stewart blameless in law. Certainly, Mr. Stewart did not intend to kill or murder anyone, but the remedy he adopted was far worse than the disease. It would have been much better for 43 gallons of liquor to find its way into illegal channels than for the baby child to suffer a broken shoulder and fractured skull, for Mr. Prather to suffer a fractured collarbone, concussion of the brain, and other injuries, which he testified to in court, and the other occupants to suffer the injuries that they did.

I will appreciate your views on this matter, advising me whether or not you concur in my opinion.

Sincerely yours,

E. L. FORRESTER, M. C.

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THE SECRETARY OF THE TREASURY,
*Washington, February 20, 1936.*

Hon. AMBROSE J. KENNEDY,
*Chairman, Committee on Claims,*
*House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your letter of February 7, 1936, previously acknowledged, relative to bill H. R. 10419, 74th Congress, 2d session, for the relief of S. H. Prather. The bill provides that S. H. Prather be paid $10,000 in full satisfaction of his claims against the United States "on account of property damage and personal injuries sustained by himself, his wife, and two minor children, when his automobile in which they were riding was struck near Quitman, Ga., by an automobile driven by bootleggers who were being pursued at a high rate of speed by an officer of the Bureau of Internal Revenue," etc.

The automobile accident in which Mr. Prather and members of his family were injured has been investigated. A copy of the report showing the results of the investigation, submitted by Special Investigator J. F. Wilmeth, is enclosed.

The material facts gathered from the correspondence files and from Mr. Wilmeth's report appear to be as follows: On August 6, 1935, J. O. Stewart, investigator, Alcohol Tax Unit, Internal Revenue Bureau, and W. A. Cato, a State officer, were traveling by automobile from Moultrie to Valdosta, Ga. Upon reaching a point about 3 miles east of Quitman, Ga., a car occupied by Howard Hart and William Hart, known as bootleggers, passed them. The officers detected a strong odor of whiskey coming from the passing car. Upon seeing the officers, the bootleggers accelerated their speed. The officers turned and started in pursuit of the fleeing car, which was headed toward Quitman.

The officers pursued the bootleggers for about 2 miles at a rate of speed approximating 70 miles per hour. The bootleggers' car turned into a street in Quitman and speeded up to about 75 miles per hour. At a street intersection the car, operated by the bootleggers, collided with a new Studebaker sedan, driven by Mr. Stuart H. Prather, of Americus, Ga. In the car with Mr. Prather were his wife, son, and daughter, all of whom were injured, and his automobile was badly wrecked.

At the time the automobiles collided, the car in which the officers were traveling was approximately 100 yards away. The two bootleggers were arrested for violation of section 3450, Revised Statutes, and section 201 of the Liquor Taxing Act of 1934, and their car containing 43 gallons of illicit whisky was seized. Ambulances were secured promptly, and the injured members of the Prather family were immediately carried to the hospital at Quitman.

Special Investigator Wilmeth interviewed Dr. Stuart Prather, father of Stuart H. Prather. Dr. Prather stated that he and other physicians had made an examination of the injured persons, which showed that Stuart H. Prather suffered an injured back, a wrenched right hip and severe shock; Mrs. Prather suffered contusions and shock; Mr. Stuart H. Prather's son suffered an injured back and broken rib; and the daughter, who was the most severely hurt, suffered a broken shoulder and a fractured skull. Dr. Prather stated, however, that all of these injured persons were satisfactorily recovering. Moreover, that he did not hold Investigator Stewart at fault regarding the accident, but did hope that some provision would be made whereby his son's family could be repaid for their injuries, as well as for the loss of their automobile.

Sheriff Blanton was interviewed and stated, as the result of his investigation of the accident, that he was of opinion that Investigator Stewart was entire blameless in the matter; that he had the Government car fully under control; and that he was not in any way responsible for the collision. Further, he had ascertained that Investigator Stewart had slowed his car down to a careful high speed so as barely to keep the violators' car in sight when it had reached Quitman, but that the bootleggers had speeded up upon reaching Quitman in an effort to lose the investigator.

Deputy Sheriff Murphy states that there was nothing to indicate that Investigator Stewart had acted in any way other than he should have in the pursuit of the law violators.

Mr. J. R. Newton, clerk in a grocery store at the street corner where the accident occurred, witnessed the accident and stated that he saw the violators' car approaching at a rate of speed approximating 70 miles an hour; that the car driven by Investigator Stewart was following about a block and a half away at a slower speed and under control; and that it stopped without difficulty at the scene of the collision. He believes that Investigator Stewart did not act wrongly in any way, but was only doing his duty, and further that the violators were taking advantage of the city in an effort to make their escape.

The investigation further shows that Howard Hart and William Hart, who are clearly to blame for the collision, are without finances or property, and that they have prior criminal records. William Hart had been convicted in the State court at Moultrie, Ga., for violating the local prohibition law and, upon being sentenced, was placed on probation. Howard Hart had been prosecuted at Moultrie and at Quitman for violations of the State prohibition law.

It appears that Investigator Stewart and State Officer W. A. Cato, a deputy sheriff, were acting in the discharge of their duties in pursuing these bootleggers, who, realizing that they were about to be apprehended for violations of law committed in the presence of the officers, were attempting to escape.

The United States is not responsible in damages for any injuries inflicted by the bootleggers on Mr. Prather and members of his family, or for the wrecking of his automobile.

It is recommended that the bill be not passed.

Very truly yours,

WAYNE C. TAYLOR,
*Acting Secretary of the Treasury.*

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TREASURY DEPARTMENT,
INTERNAL REVENUE SERVICE,
*Jacksonville, Fla., September 3, 1935.*

Special Investigation 143.

DISTRICT SUPERVISOR, ALCOHOL TAX UNIT,
*Bureau of Internal Revenue, Atlanta, Ga.*

SIR: This is a report into the facts and circumstances in the above numbered special investigation, which relates to a collision that occurred between the automobile of 2 violators, Howard Hart and William Hart, and the automobile of a citizen named Stuart H. Prather, at Quitman, Ga., on August 6, 1935, at which time Mr. Prather and his family of 3 were seriously injured, the automobile of the violators being at the time pursued by Investigator J. O. Stewart and Deputy Sheriff W. A. Cato in a Government car.

PERSONS INTERVIEWED

Investigator J. O. Stewart was interviewed at Macon, Ga., in regard to this matter, but nothing of value in addition to that contained in his letter of August 15, 1935, was obtained, except that he stated that he did everything possible at the time of the accident to render first aid and get Mr. Prather and his family to a hospital.

Mr. Stuart H. Prather was located and interviewed at Americus, Ga. He stated that he recalls very little about the crash as the car of the violators came out of a dirt side street at Quitman, Ga., at a high rate of speed and struck his car unexpectedly at such a high rate of speed that he, his wife, and family were all rendered unconscious and their car demolished.

He further stated that he felt no resentment toward the pursuing officers in the case, as he knew them to be doing their duty and were without blame, with the possible exception that they perhaps should not have been chasing the violators' car at such a high rate of speed through a town. He stated that he did not know if it was permissible for officers of the Government to chase a car at such a high rate of speed or not, but that if it was, he had no fault to find with Investigator Stewart. He also stated that he has known Investigator Stewart for several years and has a great deal of respect for him, both as an officer and a gentleman; that since the accident he has found that Investigator Stewart did everything in his power to assist them at the time of the crash. Mr. Prather further stated that in view of the fact that he and his wife and two children were all more or less badly injured at the time, and their new Studebaker automobile made an almost total loss, that he felt someone should compensate him for the damages suffered. Further, that he has investigated and found that the violators who caused the wreck were without any financial responsibility, in view of which it seemed that some provision should be made by the Government to compensate him for his losses, as one of their officers had, in a way, indirectly caused the accident.

Dr. Stuart Prather, father of Stuart H. Prather, was also interviewed. He stated that the examination made by him and other physicians, on his son and family, showed that his son had suffered an injured back and a wrenched right hip and severe shock; that his daughter-in-law, Mrs. Stuart H. Prather, had suffered contusions and shock; that his grandson suffered an injured back and a broken rib; and that his granddaughter, the most severely hurt, suffered a broken shoulder and a fractured skull. Further, that all were satisfactorily recovering. He stated that Investigator Stewart called upon him in regard to the accident and that he did not hold Investigator Stewart at fault in the accident, but hoped that some provision would be made whereby his son's family could be repaid for the injuries, and for the loss of their new car.

An examination was made of the wrecked car, which had been brought to Americus, Ga. It appears to be a total loss and it seems remarkable that no loss of life resulted from the wreck.

Mr. C. E. Blanton, sheriff at Quitman, Ga., where the accident occurred, upon being interviewed stated that his investigation of the accident showed that Investigator Stewart was, in his opinion, entirely blameless in the matter; that he had the Government car fully under control and in no way was responsible for the crash. He stated that he ascertained that Investigator Stewart slowed his car down to a careful high speed to barely keep the violators' car in sight when he reached Quitman, Ga.; that on the other hand the driver of the violators' car speeded up upon reaching Quitman in an effort to lose Investigator Stewart in the city. He further stated that he has known Investigator Stewart for several years as an officer, and has a very high regard for his judgment and ability; that any hostile criticism prevalent at Quitman, Ga., was from bootleg sympathizers or from other law violators. He also stated that the editor of the Quitman Free Press was himself a person of doubtful character; that on one occasion a year or so ago he falsely claimed to have been kidnaped for several days; that as a result of this hoax the Department of Justice agents were called in to investigate; that later it was shown false. In general, he stated that no one of any respectable standing at Quitman, Ga., expressed themselves disfavorable to Investigator Stewart.

Deputy Sheriff A. S. Murphy, Quitman, Ga., was interviewed. He stated that he made the hurry call to the scene of the accident immediately after it happened; that there was nothing to indicate that Investigator Stewart had acted in any way other than he should have in the pursuit of a law violator. He stated that Stewart did everything possible to assist in getting the injured persons to medical attention as soon as he possibly could. Deputy Sheriff Murphy concurred with Sheriff Blanton as to the editor oof the Quitman Free Press and that there was no derogatory comment to Stewart from responsible people at Quitman, Ga. He also stated that he had a very high opinion of Investigator Stewart as an officer and a citizen.

Mr. G. A. Blanton, chief of police, Quitman, Ga., was interviewed. He stated that he attended a Kiwania Luncheon at Quitman, Ga., a few days after the accident where the matter of the accident was discussed; that everyone was inclined to feel that Investigator Stewart acted in no way that an officer should not have acted. He was in accord with the statements of Sheriff Blanton and Deputy Sheriff Murphy as to the character of the editor of the Quitman Free Press, and stated also that any other disfavorable comment was from bootleg sympathizers

Mrs. J. C. Atkinson, a grocery store owner in Quitman, Ga., at the street intersection where the accident occurred was interviewed. She stated that she heard the crash and looked up in time to see the car containing Investigator Stewart and Deputy Sheriff Cato come to a pause, fully under control, at the scene of the accident; that Investigator Stewart acted in every way properly in rendering first aid to the injured and in getting them to a hospital. She stated that in her belief only persons antagonistic to officers of the law were commenting disfavorably to Investigator Stewart.

Mr. J. R. Newton, a clerk in a grocery store at the street corner in Quitman, Ga., where the accident happened was interviewed. Mr. Newton, who appears to be the only eye witness other than Investigator Stewart and Deputy Sheriff Cato, stated that he saw the car of the violators approaching at a high rate of speed approximately 70 miles an hour; that the car driven by Investigator Stewart was following about 1½ blocks away at a slower speed and apparently under control as it stopped without trouble at the scene of the crash. He stated that Investigator Stewart rendered every assistance reasonably possible to the injured Prather family, and to the injured violators; that he took the injured Prather family away immediately in his car to get them to a hospital or medical attention. He further stated that he believed that Investigator Stewart acted in no way wrong in the matter; that he feels that he was only doing his duty; also that he believes that the violators were taking advantage of the city in an effort to make their escape.

CONCLUSION AND RECOMMENDATION

The results of this investigation cause me to express an opinion that Investigator J. O. Stewart was entirely blameless in causing this unfortunate accident. It seems very evident that he exercised good judgment and had the Government car under full control in the pursuit of the violators' car; that he had just cause to give chase to the other car is borne out by the fact that 43 gallons of non-tax-paid spirits were found in the violators' automobile after the accident, and that he recognized them both as 2 habitual liquor law violators. It is therefore recom-

mended that no consideration be given to the thought that he was responsible for the accident.

With reference to the personal injuries and property damages suffered by Mr. Stuart H. Prather and his family, it is thought that if possible some provision should be made either by special legislation or otherwise, to compensate them for the losses sustained as the investigation showed the violators in the case to be without financial responsibility.

Respectfully,

J. F. WILMETH, *Special Investigator.*

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Calendar No. 1945

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1925

# LT. P. B. SAMPSON

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 6184]

The Committee on the Judiciary, to which was referred the bill (H. R. 6184) for the relief of Lt. P. B. Sampson, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

### AMENDMENT

On page 2, lines 3 and 4, strike the words "in excess of 10 per centum thereof".

### PURPOSE

The purpose of the proposed legislation, as amended, is to authorize and direct the Secretary of the Treasury to pay the sum of $1,139.57 to 1st Lt. P. B. Sampson in full settlement of all claims against the United States for the damages sustained by him to his household goods as the result of a crash of a B–29 bomber on the island of Guam in December of 1953.

### STATEMENT

A similar bill of the 83d Congress, S. 3293, passed the Senate on August 11, 1954, but reached the House Judiciary Committee too late for action by the House of Representatives prior to the adjournment of the 83d Congress.

The facts in connection with this claim are fully set forth in House Report No. 744, to accompany H. R. 6184, and are as follows:

> The claimant in this case, an Air Force lieutenant, was stationed at Andersen Air Force Base on the island of Guam, where he and his family occupied Government quarters. On the 17th of December 1953, a B–29 aircraft on an authorized flight crashed into Lieutenant Sampson's house and, together

with the ensuing fire, destroyed all of his household goods and personal effects. Lieutenant Sampson presented a claim in the amount of $5,033.02 to the Air Force under the provisions of the Military Personnel Claims Act. After careful consideration and in accordance with existing Air Force regulations, a determination was made that his claim was valid to the extent of $3,639.57. However, under existing law, the Air Force could pay him only $2,500. This bill would pay Lieutenant Sampson the difference between the amount permitted to be paid by the Air Force and that which the Air Force considered to be his maximum loss.

The committee, after consideration, concurs in the conclusions reached by the House of Representatives, reaffirms the action taken by it in connection with a similar bill of the 83d Congress, and recommends that this bill, H. R. 6184, as amended, be favorably considered.

There is on file with the committee a complete inventory of the losses sustained by the claimant.

Attached hereto and made a part of this report is a letter from the Department of the Air Force dated June 11, 1954, as well as a letter and newspaper clipping from the wife of the claimant, which initiated the introduction of this bill.

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DEPARTMENT OF THE AIR FORCE,
OFFICE OF THE SECRETARY,
*Washington, June 11, 1954.*

Hon. WILLIAM LANGER,
*Chairman, Committee on the Judiciary,*
*United States Senate.*

DEAR MR. CHAIRMAN: Reference is made to your request for comments of the Department of Defense on S. 3293, 83d Congress, a bill for the relief of Lt. P. B. Sampson. Because Lieutenant Sampson is an Air Force officer, the Secretary of Defense has delegated the responsibi ity of reply to the Department of the Air Force.

The bill, if enacted, would direct the payment to Lt. P. B. Sampson the sum of $1,139.57 in compensation for the loss of personal property destroyed by an aircraft accident. Lieutenant Sampson, an Air Force officer, was stationed at Andersen Air Force Base where he and his family occupied Government quarters. On December 17, 1953, an Air Force B–29 aircraft, on an authorized flight, crashed into Lieutenant Sampson's house and destroyed all of his household goods and personal effects. Lieutenant Sampson presented a claim under the provisions of the Military Personnel Claims Act in the amount of $5,033.02. After careful consideration, a determination was made that this claim was valid to the extent of $3,639.57 and the statutory limit of $2,500 was paid to Lieutenant Sampson. The sum of $1,-139.57, as stated in S. 3293, represents the difference between the amount paid and the amount determined by the Air Force to be his actual loss.

The Department of the Air Force concurs in the enactment of S. 3293. Because of the frequent occurrence of situations of this general nature and the hardships of the claimants in suffering the necessary delay of private relief legislation, the Department of Defense has recommended deletion of the $2,500 ceiling of the present law. The

recommended proposal is a part of the 1954 Department of Defense legislative program and was introduced in Congress as H. R. 7068.

The Bureau of the Budget interposes no objection to the submission of this report.

Sincerely yours,

H. LEE WHITE,
*Assistant Secretary of the Air Force.*

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SAN FRANCISCO, CALIF., *March 15, 1954.*

DEAR MR. LANGER: Enclosed is a clipping from today's Air Force Times. If this is true I certainly urge you to introduce a bill changing it. We are recent victims of the bill and I think you will see my point of view.

Last December 17, here on Guam, we had a B–29 crash into our housing area. At 6:48 a. m. we had a flaming gas tank crash through our kitchen wall. We were fortunate in getting ourselves and our two children to safety with only minor burns. Our quarters were gutted and the only thing we had were our nightclothes that we had on. We were told to make our claim naming by brand name each article, the purchase price, and date purchased. When we closed our claim it was $5,033.02. I considered our home average, having the normal amount of furnishings and we had bought clothing ahead because of the inability to purchase things over here. Today we received a letter saying that they were sending us a check for $2,500 because of the Personnel Claims Act. We are not alone. There are 4 other families in the same boat plus the kin of 2 families who were all killed. If each one of the committee would sit down and itemize your effects, I'm sure you would see that $2,500 doesn't cover very much. I'm hoping to see favorable action soon.

Sincerely,

Mrs. PRESTON B. SAMPSON.

WASHINGTON.— * * * At issue is the fact that no matter how much damage a serviceman suffers to his property incident to his service—say, in damage or loss of furniture in shipment—he cannot recover more than $2,500 except by special act of Congress.

H. R. 3996, to amend the Military Personnel Claims Act of 1945 to remove the limitation of $2,500, was approved by this committee and passed the House on April 18, 1955, and is now pending before the Senate Committee on the Judiciary.

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Calendar No. 1946

84TH CONGRESS, 2d Session — SENATE — REPORT No. 1926

# LT. MICHAEL CULLEN

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 7164]

The Committee on the Judiciary, to which was referred the bill (H. R. 7164) for the relief of Lt. Michael Cullen, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill, as amended, do pass.

### AMENDMENT

On page 1, line 11, strike the period and insert in lieu thereof a colon and add the following:

> *Provided*, That no part of the amount appropriated in this Act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

### PURPOSE OF AMENDMENT

The purpose of the proposed amendment is to eliminate the payment of attorney's fees from the award provided in this bill.

90007°—57 S. Rept., 84-2, vol. 7——22

## PURPOSE

The purpose of the proposed legislation, as amended, is to pay the sum of $1,100 to Lt. Michael Cullen, of Honolulu, T. H., in full settlement of his claims against the United States for reimbursement for expenses incurred by him in connection with educational benefits under laws governing the rehabilitation and training of veterans.

## STATEMENT

Harold Michael Cullen, Jr., entered the naval service on April 18, 1944, as an apprentice seaman and was thereafter successively appointed midshipman and ensign, United States Naval Reserve. He was released from active duty under honorable conditions as an ensign in the Naval Reserve on October 7, 1946. On October 16, 1946, he accepted an appointment as an ensign in the Regular Navy and has served on active duty continuously since that date.

On June 18, 1951, Lieutenant Cullen entered upon a course of instruction at the University of Hawaii pursuant to the provisions of the Serviceman's Readjustment Act of 1944. Since Lieutenant Cullen was at that time permanently assigned to the U. S. S. *Radford*, a destroyer escort, his application was for part-time training only and no subsistence allowance was involved.

In the latter part of 1951, Lieutenant Cullen's ship was ordered out of the Hawaiian area for duty in a combat zone surrounding Korea. He was later assigned to the Pentagon in Navy Logistics and at the beginning of the fall term in 1952 applied for continuance of his GI schooling. His application was denied by the Veterans' Administration under regulations requiring continuous part-time study and defining such study as:

> * * * Continuous part-time study means study that is pursued without any more interruption than is caused by the institution providing the training, or by other reasons beyond the veteran's control.

By letter of November 4, 1952, Lieutenant Cullen was advised by the Chief of the Registration and Research Section of the Veterans' Administration as follows:

> In reply to your letter of October 20, 1952, you are advised that the reasons presented for interrupting your training status are not considered valid reasons beyond your control; therefore, our denial of October 16, 1952, is confirmed and continued.

Lieutenant Cullen thereafter appealed this decision to the Board of Veterans' Appeals which also denied the claimant's application. The Committee on the Judiciary of the House of Representatives requested and received a report from the Department of the Navy concerning this legislation. In its report, the Navy Department points out that in the latter part of 1951, when Lieutenant Cullen's ship was ordered out of the Hawaiian area, officers of the naval service were not permitted to resign from the service and the voluntary separation of an officer at his own request was not possible at that time. Therefore, no parallel could be drawn between such a case and one wherein an

individual might have voluntarily discontinued his employment in order not to interrupt his education. The Department goes on to point out that during the period when resignations were not accepted it was considered that in any case where a member of the armed services was ordered to an area where no educational institution was reasonably available, discontinuation of education would clearly be beyond his control.

This latter determination by the Department of the Navy that, under circumstances present here, discontinuation of education would clearly be beyond the control of the veteran, only amounts to commonsense. Since there appears to be no question that this claimant was originally entitled to the benefits of the GI bill of rights, that he sought to use such benefits and was interrupted in such use for reasons beyond his control, the committee believes that the instant legislation is proper and should be approved. The claimant has stated he has incurred expenses in the amount of $1,100 for tuition and books and that this sum does not include reimbursement for subsistence to which he would not be entitled since he was in the active naval service. In view of the foregoing circumstances and in the belief that the claimant has been denied benefits to which he was entitled, the committee recommends favorable consideration of this legislation, as amended.

Attached hereto is the report of the Department of the Navy in connection with this legislation, together with an affidavit of Lieutenant Cullen.

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DEPARTMENT OF THE NAVY,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
*Washington, D. C., July 25, 1955.*

Hon. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,*
*House of Representatives, Washington, D. C.*

MY DEAR MR. CHAIRMAN: Reference is made to your letter of July 11, 1955, to the Secretary of the Navy requesting comment on H. R. 7164, a bill for the relief of Lt. Michael Cullen.

This measure would authorize the payment of the sum of $1,100 to Lt. Michael Cullen of Honolulu, T. H. This sum would be in full settlement of all claims of Lieutenant Cullen against the United States for expenses incurred by him in connection with educational benefits under the appropriate laws governing the rehabilitation and training of veterans.

The records of the Department of the Navy indicate that one Harold Michael Cullen, Jr., file No. 461706, originally entered the naval service on April 18, 1944, as an apprentice seaman, V–12, United States Naval Reserve. He was thereafter successively appointed midshipman and ensign, United States Naval Reserve. He was released from active duty under honorable conditions as an ensign, United States Naval Reserve, on October 7, 1946. On October 16, 1946, he accepted an appointment as ensign, United States Navy, and has served on active duty continuously since that date and is now serving in the grade of lieutenant.

While it is not a matter of official record in this Department, it appears that Lieutenant Cullen entered upon a course of instruction at the University of Hawaii under Government subsidy pursuant to the provisions of the Servicemen's Readjustment Act of 1944 and that this education was interrupted by reason of official orders transferring his ship, the U. S. S. *Radford*, from Hawaii to Korean waters. It further appears that he was thereafter assigned to duty in Washington, D. C., and applied to the Veterans' Administration for continuation of his education under Government subsidy. This application was rejected by the Veterans' Administration and that action was sustained by the Board of Appeals of that agency. The grounds for this rejection have been stated to be that "an interruption * * * or failure to pursue such course during successive school years, where such interruption or failure to resume training is occasioned by compliance with orders * * * is not considered an interruption for a reason beyond the control of the veteran for the purpose of permitting reentrance into training."

In the latter part of 1951 when Lieutenant Cullen's ship was ordered out of the Hawaiian area, officers of the naval service on active duty were not permitted to resign from the service. This was due to the Korean conflict and the necessity for effectuating involuntary recalls of personnel to meet that emergency. The voluntary separation of an officer at his own request was not possible at this time and there can be no parallel drawn with the case wherein an individual might be compelled to leave an area in order to retain his employment, and wherein it might be argued that he might have voluntary discontinued his employment in order not to interrupt his education. During the period from July 24, 1950, to January 1, 1954, when the acceptance of resignations was resumed, it is considered that in any case where a member of the armed services was ordered to an area where no educational institution was reasonably available, discontinuation of education would clearly be beyond his control.

This Department has no information upon which to base a comment as to the amount of money claimed by Lieutenant Cullen. However, it is noted it would not exceed the cost which the Government would have incurred had he continued his course at the University of Hawaii without interruption.

Subject to the foregoing comments relative to the correctness of the amount of reimbursement which is sought, the Department of the Navy recommends enactment of H. R. 7164.

There has been insufficient time to obtain advice from the Bureau of the Budget as to the relationship of this report to the program of the President.

Sincerely yours,

IRA H. NUNN,
*Rear Admiral, USN,*
*Judge Advocate General of the Navy*
(For the Secretary of the Navy).

ESCORT SQUADRON 11,
*Care of Fleet Post Office,*
*San Francisco, Calif., February 6, 1956.*

*To Whom It May Concern:*

The expenses incurred by me in connection with H. R. 7164 are enumerated herewith:

| | |
|---|---|
| Tuition: | |
| Fall term 1952, 3 courses | $126 |
| Spring term 1953, 3 courses | 126 |
| Summer term 1953, 2 courses | 84 |
| Fall term 1953, 3 courses | 135 |
| Spring term 1954, 3 courses | 135 |
| Summer term 1954, 2 courses | 90 |
| Fall term 1954, 2 courses | 90 |
| Spring term 1955, 2 courses | 90 |
| Diploma, June 1955 | 20 |
| Total | 896 |

The cost of my books ranged from $7 to $25 per course and I have estimated the average to be about $10 per course. Additional expenses for notebooks, paper, etc., plus interest accrued and accruing for loans negotiated to pay the above, are not included in this claim.

MICHAEL CULLEN,
*Lieutenant, United States Navy.*

Subscribed and sworn to before me at sea this 6th day of February 1956.

[SEAL]

E. G. SANDERSON,
*Captain, United States Navy,*
*Commander, Escort Squadron 11.*

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Calendar No. 1947

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1927

# WILLIAM C. IRVINE

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany S. 422]

The Committee on the Judiciary, to which was referred the bill (S. 422) for the relief of William C. Irvine, having considered the same, reports favorably thereon, with amendments, and recommends that the bill, as amended, do pass.

### AMENDMENTS

1. On page 1, line 7, strike out "$3,800.87" and insert in lieu thereof "$2,622.05".
2. On page 2, lines 4 and 5, strike the words "in excess of 10 per centum thereof".

### PURPOSE OF THE AMENDMENTS

The purpose of the first amendment is to reduce the amount of the claim: (*a*) To show credit of $2,500 already paid claimant under the provisions of the Military Personnel Claims Act; and (*b*) to reduce the balance due after showing such payment to reflect reasonable depreciation on certain items, allowing the maximum allowable on certain expensive items, applying the reasonable substitute rule on other expensive items, and disapproving a claim for one item, in accordance with Air Force policy and so as to bring the amount of the claim in line with the amount recommended by the Department of the Air Force.

The purpose of the second amendment is to eliminate the payment of attorney's fees in connection with the award provided in the legislation, inasmuch as there is no evidence to substantiate any claim that legal services have been rendered.

### PURPOSE OF LEGISLATION

The purpose of the proposed legislation, as amended, is to authorize and direct the Secretary of the Treasury to pay William C. Irvine, chief warrant officer, United States Air Force, Andrews Air Force

Base, Washington, D. C., the sum of $2,622.05 in full satisfaction of his claim against the United States for reimbursement in addition to the amount he received under the provisions of the Military Personnel Claims Act of 1945 for household and personal effects destroyed or damaged when the vessel aboard which such effects were being shipped ran aground while en route from England to New York.

STATEMENT

The Department of the Air Force is of the opinion that Warrant Officer Irvine has a valid claim in the amount of $2,622.05, and therefore has no objection to enactment of S. 422, as amended.

A similar bill, S. 3626, was introduced in the 83d Congress, 2d session, on June 25, 1954, but due to the lateness of the session was not acted on by the committee.

The pertinent facts relating to this claim are fully set forth in certain correspondence and exhibits pertaining to the aforesaid S. 3626, 83d Congress, 2d session, which are appended to and made a part of this report. Briefly, these facts may be summarized as follows:

For some time prior to April 7, 1953, claimant was stationed at Burtonwood Air Force Base in England. On the aforesaid date, claimant, pursuant to duly authorized permanent change of station orders, had a firm of warehousing contractors pack the household furnishings which belonged to him, whereupon these furnishings were loaded aboard a Government vessel, the steamship *Rutgers Victory* at the port of Liverpool, England, for shipment to New York.

On or about June 15, 1953, this vessel ran aground and was forced to return to England before proceeding to New York. At that time certain storage compartments of the vessel were found to have been inundated and claimant's complete shipment damaged by sea water.

On September 15, 1953, claimant's shipment was delivered at Andrews Air Force Base, Washington, D. C. This shipment consisted of 7 boxes of household furniture, furnishings, and other items, of a total weight of 5,336 pounds net.

While the method of packing was considered superior, the packing material created a perfect capillary retainer for sea water. Thus while 3 full months had elapsed from the date of the accident until the furnishings were unpacked at Andrews Air Force Base (June 15, 1953, until September 15, 1953), sea water ran freely from the packing boxes as they were opened. Many pieces fell apart in attempting to unpack them. The contents were covered by mold. All metal was badly corroded. Cloth materials were rotten. There was very little that could be salvaged.

No claim was made against the common carrier because it was a Government vessel, and the damage apparently was incurred while aboard this ship in military sea transportation.

Warrant Officer Irvine filed his claim with the Department of the Air Force in the amount of $6,390.87. In turn, the Department of the Air Force investigated the claim under the provisions of the Military Personnel Claims Act of 1945, reported that the loss occurred under the circumstances described by claimant and thereupon made an administrative determination that claimant had a just and reasonable claim in the amount of $5,122.05. This figure was determined by taking a reasonable depreciation on certain items, allowing the maximum allowable on certain expensive items, and disapproving

the claim for one item in accordance with Air Force policy. Thereafter, claimant was paid $2,500, the statutory maximum under the provisions of the Military Personnel Claims Act of 1945. The amount of this claim, $2,622.05, represents the balance of the claim still unpaid.

The committee, after careful consideration of all the evidence, recommends that S. 422, as amended, be favorably considered.

Attached hereto and made a part of this report are the letters and other supporting data referred to initially in this report.

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DEPARTMENT OF THE AIR FORCE,
*Washington, July 23, 1954.*

Hon. WILLIAM LANGER,
*Chairman, Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

DEAR MR. CHAIRMAN: Reference is made to your request for comments of the Department of the Air Force on S. 3626, 83d Congress, a bill for the relief of William C. Irvine, chief warrant officer, United States Air Force.

The bill, if enacted, would direct the payment to Warrant Officer William C. Irvine of the sum of $3,890.87 in full satisfaction of his claim against the United States for reimbursement, in addition to the amount he received under the provisions of the Military Personnel Claims Act of 1945, for household and personal effects destroyed or damaged when the vessel aboard which such effects were being shipped ran aground while en route from England to New York.

Pursuant to duly authorized permanent change of station orders, seven boxes of household goods were loaded abroad a Government vessel, the steamship *Rutgers Victory*, at the Port of Liverpool, England, for shipment to New York. On or about June 15, 1953, this vessel ran aground and was forced to return to England. At that time certain storage compartments of this vessel were found to have been inundated and Warrant Officer Irvine's complete shipment was damaged by sea water. On September 15, 1953, his shipment was delivered at Andrews Air Force Base and the contents were inspected and found to be water soaked and badly damaged by mold, rot, and corrosion.

Warrant Officer Irvine's claim of $6,390.87 was investigated under the provisions of the Military Personnel Claims Act and an administrative determination was made that he had a just and reasonable claim in the amount of $5,122.05. The difference between the amount claimed and the amount found to be just and reasonable results from taking reasonable depreciation on certain items, allowing the maximum allowable on certain expensive items, applying the reasonable substitute rule on other expensive items, and disapproving his claim for one item, in accordance with Air Force policy. He was paid $2,500, the statutory maximum under the provisions of the Military Personnel Claims Act.

The Department of the Air Force believes that Warrant Officer Irvine has a valid remaining claim in the amount of $2,622.05 and has no objection to the enactment of S. 3626, if amended to provide payment of this lesser amount.

The Department of the Air Force strongly recommends enactment of H. R. 7068, which was passed by the House of Representatives on July 6, 1954, and is being considered by your committee. This bill, if enacted, would remove the $2,500 ceiling on claims of this nature and would help to alleviate the harsdhip encountered by service personnel who are victims of accidents such as this. Payment of $2,500 is a very inadequate amount to restore family necessities after complete destruction. This family has had to undergo hardship and additional expense during the delay necessitated by private relief legislation.

The Bureau of the Budget interposes no objection to the submission of this report.

Sincerely yours,

JAMES H. DOUGLAS, *Under Secretary.*

CLAIMS OFFICER'S REPORT

My investigation confirmed that the loss for which this claim is made occurred under the circumstances described by claimant since letter, exhibit D, explains the incident of the ship going aground, and inspection of the household goods revealed the almost complete destruction of the articles.

RECOMMENDATION

The amount approved is less than the amount claimed due to depreciation estimated by this office.

It appears that the amount of the claim is the amount of the purchase price less the amount of the difference between the purchase price and the cost of repairs on those articles that are repairable, using whichever is the lower price on those articles.

SEYMOUR ABRAMS,
*Captain, United States Air Force Claims Officer.*

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STATEMENT

MARCH 15 1954.

On April 7, 1953, W. Boote & Sons, furniture removal and warehousing contractors, picked up 5,336 pounds of household furnishings belonging to the undersigned at quarters 56, Burtonwood Air Force Base in England for packing, prior to shipment to the United States.

On July 30 1953, the undersigned received a letter from 59th Transportation Group commander, informing me that the shipment had departed the United Kingdom, June 15, 1953, aboard the steamship *Rutgers Victory*, and indicating that the above vessel, having run aground had returned to the port of Liverpool and that the entire shipment of seven boxes belonging to the undersigned was stowed in one of the compartments which were inundated, the extent of damage not being known.

The next knowledge the undersigned had of the shipment was on its arrival in Cameron Station, Va., September 12 1953. On September 15, 1953, Ace Van & Storage Co. delivered the shipment to quarters 154 apartment 1, Andrews Air Force Base. In unpacking same, as each box was opened, water ran freely from it. The contents were covered with mold. Many pieces fell apart in attempting to unload them. All metal was badly corroded and cloth rotten.

No claim was made against the carrier because it was apparent damage was incurred while aboard military sea transportation.

The method of packing was considered superior; however, in using so much packing material, it created a perfect capillary retainer for the sea water.

My weight limit allowance under the attendant circumstances is 7,500 pounds net; the actual total weight was 5,336 pounds net, as shown on attached copy of W. Boote & Sons packing inventory. The total gross weight indicated by W. Boote & Sons was 10,292 pounds, and the Government bill of lading indicated 10,202 pounds.

A suit has not been nor will be filed in a United States district court relative to this claim.

The undersigned is acquainted with the $2,500 ceiling in the Military Personnel Claims Act and that I intend to request a special act of Congress for the amount that exceeds the claims limit.

When shipment was received from the last common carrier, receipt was acknowledged noting that furniture and goods were a total loss due to salt water.

WILLIAM C. IRVINE,
*Chief Warrant Officer, United States Air Force.*

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DEPUTY CHIEF OF STAFF, MATERIEL,
MILITARY AIR TRANSPORT SERVICE,
ANDREWS AIR FORCE BASE,
*Washington 25, D. C., June 8, 1954.*

Senator GEORGE SMATHERS,
*Senate Office Building, Washington, D. C.*

DEAR SENATOR SMATHERS: The undersigned would appreciate assistance in preparing and introducing a private bill for relief on personal property damage incurred while returning from a military assignment in England.

I filed a claim in the amount of $6,390.87 under the provisions of the Military Personnel Claims Act of 1945, as amended, and Air Force Regulation 112–7, for this damage to my household effects in a shipment from England to the New York Port of Embarkation. I have been advised by the Claims Division, Office of the Judge Advocate General, United States Air Force, that claims falling within the

provisions of the aforementioned act are limited by Public Law 439, 82d Congress, to a maximum payment of $2,500 in any one claim.

Accordingly, my claim has been approved and payment has been made in the amount of $2,500. I would like to introduce a private bill in the amount of $3,890.87. Lt. Col. Virginia A. Hardy, Acting Chief of the Claims Division, United States Air Force, has indicated that the complete claim file will be made available for a congressional committee hearing when required.

Details covering the loss are as follows:

On April 7, 1953, W. Boote & Sons, furniture removal and warehousing contractors, picked up 5,336 pounds of household furnishings belonging to the undersigned, at quarters 56, Burtonwood Air Force Base in England, for packing prior to shipment to the United States.

On July 30, 1953, the undersigned received a letter from the commander of the 59th Transportation Group, informing the undersigned that the shipment had departed the United Kingdom June 15, 1953 aboard the steamship *Rutgers Victory* and indicating that the above vessel, having run aground while en route to New York, had returned to the port of Liverpool and that the entire shipment of seven boxes belonging to the undersigned was stowed in one of the compartments which were inundated, the extent of the damage not being known.

The next knowledge the undersigned had of the shipment was on its arrival in Cameron Station, Va., September 12, 1953.

On September 15, 1953, Ace Van & Storage Co. delivered the shipment to quarters 1–54, apartment 1, Andrews Air Force Base.

As each box was opened, water ran freely from it. The contents were covered with mold. Many pieces fell apart in attempting to unload them. All metal was badly corroded and cloth rotten.

No claim was made against the common carrier because it was apparent the damage was incurred while aboard military sea transportation.

The method of packing was considered superior; however, in using so much packing material it created a perfect capillary retainer for the sea water.

There was very little that could be salvaged, since everything had been soaking in sea water for 3 months; wood was warped, metal was eaten through, cloth and paper were rotted; everything was stained from rust, copper oxide, aluminum oxide, and black or green mold. Many items were not claimed for although ruined. The reason for this is because we had to salvage any and every thing possible for the utility that it would afford.

Enclosed is a complete copy of the claim that was submitted and approved for the $2,500 limit.

I would like to express my deepest gratitude for the courtesies extended by members of your staff to myself on a recent visit to your office.

Expeditious processing of this private bill will certainly be appreciated, as this loss has placed myself on the edge of bankruptcy, caused my wife to have a nervous breakdown, and has definitely limited the privileges of my five children.

Sincerely yours,

WILLIAM C. IRVINE,
*Chief Warrant Officer, United States Air Force.*

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Calendar No. 1948

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1928

# ELSA EMELINA ROSADO y RODRIGUEZ DE BROWER

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany S. 2785]

The Committee on the Judiciary, to which was referred the bill (S. 2785) for the relief of Elsa Emelina Rosado y Rodriguez de Brower, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

### AMENDMENTS

1. In line 5, following the word "be", insert "granted a visa and be".
2. In line 7, change the period to a comma and add the following:

under such conditions and controls which the Attorney General, after consultation with the Surgeon General of the United States Public Health Service, Department of Health, Education, and Welfare, may deem necessary to impose: *Provided*, That a suitable and proper bond or undertaking, approved by the Attorney General, be deposited as prescribed by section 213 of the said Act.

### PURPOSE OF THE BILL

The purpose of the bill, as amended, is to waive the excluding provision of existing law relating to one who is afflicted with leprosy in behalf of the wife of a United States citizen. The bill also provides for the posting of a bond as a guaranty that the alien will not become a public charge.

STATEMENT OF FACTS

The beneficiary of the bill is a 27-year-old native and citizen of Cuba who first entered the United States on November 23, 1947, at Tampa, Fla., when she was admitted as a visitor. She married a United States citizen February 22, 1948, and they have two citizen children. Her status was changed to that of a permanent resident alien on July 30, 1948, and in 1951 she returned to Cuba to visit her mother who was ill. In 1952 she was denied a visa to return to the United States because it was found that she had leprosy. She is presently in Cuba under medical care and the two children are being cared for by her relatives there. The husband is employed in Florida as a painter and auto body repair man. Without the waiver provided for in the bill, the beneficiary will be unable to enter the United States for the purpose of receiving treatment for leprosy at Carville, La.

A letter, with attached memorandum, dated March 28, 1956, to the chairman of the Senate Committee on the Judiciary from the Commissioner of Immigration and Naturalization with reference to the bill reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
*Washington, D. C., March 28, 1956.*

Hon. JAMES O. EASTLAND,
*Chairman, Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

DEAR SENATOR: In response to your request for a report relative to the bill (S. 2785) for the relief of Elsa Emelina Rosado y Rodriguez de Brower, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Miami, Fla., office of this Service, which has custody of those files.

The bill would waive the provision of the Immigration and Nationalty Act which excludes from admission into the United States aliens who are afflicted with tuberculosis in any form, or leprosy, or any contagious disease, and would authorize the alien's admission for permanent residence, if she is found to be otherwise admissible under that act. Although the alien intends to apply for admission to a publicly supported institution following her arrival in the United States, the bill does not waive the provision of section 212 (a) (15) of the Immigration and Nationality Act which excludes from admission into the United States aliens who are likely at any time to become public charges. The committee may therefore wish to give consideration to having the bill amended for the purpose of including this additional element or in lieu thereof the committee may find it desirable to amend the bill so as to provide for the deposit of a bond to insure that the alien shall not become a public charge following her entry into the United States.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SEVICE FILES RE ELSA EMELINA ROSADO Y RODRIGUEZ DE BROWER, BENEFICIARY OF S. 2785

The beneficiary, Elsa Emelina Rosado y Rodriguez de Brower, was born on October 27, 1928, in Caibarien, Las Villas, Cuba. Her husband, Raymond Warren Brower, whom she married on February 22, 1948, in Toms River, N. J., is a citizen of the United States. This is the first marriage for either of them. Two United States citizen children, Elsa Marie Brower and Linda Lou Brower, who were born on May 22, 1948, and September 2, 1949, respectively, in Lakewood, N. J., are the issue of this marriage. She and her two children are temporarily residing with her parents at Justa 52, Caibarien, Las Villas, Cuba. In addition to her parents the beneficiary has 2 brothers and 2 sisters who reside at the same address in Cuba, Another sister, Mrs. Donna Macey, resides in Bryan, Tex. The beneficiary has completed 3 years of high school She is unemployed and she, as well as her two children, are wholly dependent upon her husband for support.

The beneficiary first entered the United States on November 23, 1947, at Tampa, Fla., at which time she was admitted as a temporary visitor. Her status was changed to that of a permanent resident alien on July 30, 1948. She continued to reside in the United States with her husband and children until August 9, 1951, when she and the children returned to Cuba for a temporary visit. In the course of a medical examination following her application for a visa to return to the United States, it was discovered that she was afflicted with leprosy, lepromatous type, and accordingly, a class A medical notification was issued on March 25, 1953, by a medical officer of the United States Public Health Service attached to the American Embassy, Habana, Cuba. Consequently, the beneficiary has been unable to return to the United States since a person with her affliction is inadmissible under the provisions of the Immigration and Nationality Act. She will seek treatment at the United States Public Health Service Hospital at Carville, La., if admitted to the United States.

The beneficiary's husband, Raymond Warren Brower, was born on January 28, 1929, in New York, N. Y. He now resides at 915 11th Avenue West, Bradenton, Fla. He has a sixth-grade education. He served in the United States Maritime Service from 1944 to early in 1946 when he enlisted in the United States Army in Bremen, Germany. He was honorably discharged from the United States Army in February 1947. He is now employed in Bradenton, Fla., as an automotive metalworker and painter. His income from employment averages between $75 and $80 a week. He has no known tangible assets. His parents and two brothers reside in the United States.

Senator George A. Smathers, the author of the bill, has submitted a number of letters and documents in connection with the case, among which are the following:

FILE NO. 211—BROWER, ELSA EMELINA ROSADO Y RODRIGUEZ DE

AMERICAN EMBASSY,
*Habana, Cuba, July 11, 1955.*

Hon. GEORGE A. SMATHERS,
*United States Senate,*
*Washington, D. C.*

MY DEAR SENATOR SMATHERS: Receipt is acknowledged of your letter dated June 30, 1955, concerning your interest in the immigration visa application of Mrs. Elsa Emelina Rosado y Rodriguez de Brower.

The records of this Embassy indicate that Mrs. Brower appeared at the Visa Unit on or about August 26, 1952, and that she was examined by a physician of the United States Public Health Service who suggested that she consult a skin specialist and bring a report of his findings in order that it could be determined whether or not she was eligible to receive a visa. On March 25, 1953, the skin specialist who examined Mrs. Brower advised the Public Health surgeon at the Embassy that the applicant is suffering from leprosy (lepromatous type), a dangerous contagious disease. Both section 3 of the old law (the Immigration Act of February 5, 1917, as amended), and section 212 (a) (6) of the Immigration and Nationality Act, effective on December 24, 1952, makes mandatory the refusal of a visa to an applicant who is suffering from such a disease.

You are assured that Mrs. Brower's case was given every consideration consistent with the immigration laws and regulations in effect.

In compliance with your request, there is returned herewith the letter from Mr. Raymond W. Brower dated June 26, 1955, enclosed with your letter under reference.

Sincerely yours,

ANTONIO CERTOSIMO,
*American Consul.*

BRADENTON, FLA., *June 26, 1955.*

DEAR SIRS: I am writing this letter in hopes I can receive help immediately on returning my wife, Elsa Brower, to the United States.

The authorities of Cuba have refused to let her return to the United States for 3 years for no sound logical reason.

We were married 6 years ago in Toms River, N. J. We have two children, both born in the United States.

Three years ago my wife's mother became very sick in Cuba. My wife went to visit her with no knowledge of not being able to return to the United States in a week. She was refused entrance and has been ever since. She is a little sickly from all the hardship that has been pushed on her. But she has no disease.

I have been running back and forth to Cuba for the part 3 years but have been unable to help her. As I cannot speak the language I am unable to obtain work there.

I am an American citizen. I have served in the United States Army. I met my wife while in Cuba, serving in the United States Army.

I want my daughter to enter school here as she is of age. My children have had to go to Cuba to be with their mother. And I must be in the United States to work.

I beg you to find a way to release my wife immediately to the United States. If you must, please obtain help from the President, as this is a very heartbreaking situation for my family.

I have a good job and can support my wife. My mother and my brother both own property they would be glad to put up for her security.

Please act immediately. Trusting for your help.

Sincerely,

RAYMOND W. BROWER.

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MANGO, FLA., *October 19, 1955.*

Hon. GEORGE A. SMATHERS,
*United States Senator.*

DEAR SIR: It has been a honor and a pleasure to receive your very kind letter. I want to thank you sincerely for your help.

We would be very grateful if you would bring this before Congress when it convenes in January. I do not know too much about Congress or how long it will take before we will know if she will receive her visa. We will pray for a quick report.

I would like to go to Cuba and have Elsa examined again and find a way to bring back the children for school and care. I am sure the children are O. K. as Elsa's family are caring for the children. Elsa has been receiving treatment ever since she has been in Cuba. The doctor gave her much encouragement and it is possible she may be cured by now. Elsa is afraid and timid. I went over to Cuba and went to the consul and Embassy in Cuba but I could not get to see anyone.

I have wasted money, hours and days. I wanted to make a plan to bring the children home and be cared for until Elsa can be brought home. I want Elsa left in good hands for care and no worries as she's very nervous and does not want to be left in Cuba alone. And my son can't go to Cuba unless he could get work because he has to support his family. My oldest son Alfred cannot help now as he and his wife and two children were stricken with lolabassee polio (I am afraid I did not spell that correctly). He has two older children and my other son, Warren, are all right so far. My son Alfred is just able to be out. He is not affected.

My husband and I have spend our life savings on help to try and get Elsa home. It has cost us $5,000 on trips to Cuba. Do you know of any way I could do this without me going so far in debt? You see I go over there without knowing where to go or whom to see. It seems I have to have a person with influence to get by. Have you any suggestion you could offer me so I can plan my trip? I know my airplane fare and my hotel bill comes to $100 but it is the trips to certain places, other expenses like doctors. I have to plan on. Could you tell me who to see? Sincerely thanking you for your trouble, I am,

Very sincerely,

GLADYS BROWER.

BRADENTON, FLA., *September 15, 1955.*

DEAR SENATOR SMATHERS: First I want to thank you for the kind letter you wrote my brother concerning his wife in Cuba. I am afraid this has been a terrible shock to him to hear of her condition. I cannot understand why he was not told before. To tell you the truth, the sad news has made our whole family sick.

We are bringing the children to the States to be examined and cared for over here.

It is very hard to tell his wife she must give up the children and take them away from her forever. That is to give her no hope for life.

The children and my brother are American citizens.

I would like to ask you if there is any way in the world possible to bring Elsa to the place in Louisiana where leprosy is treated.

She will not be a burden on the country. We will care for her. That way she will be able to see the children sometimes. Even if through glass.

If you are not in authority to grant permission to do this, please tell me who to write to.

Do you think there is a chance to work this out in this manner?

Sincerely,

ALFRED J. BROWER.

P. S.—Concerning your recent correspondence with Raymond Brower.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 2785), as amended, should be enacted.

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Calendar No. 1949

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1929

# APPROVING THE GRANTING OF THE STATUS OF PERMANENT RESIDENCE TO CERTAIN ALIENS

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. Con. Res. 201]

The Committee on the Judiciary, to which was referred the concurrent resolution (H. Con. Res. 201) favoring the granting of the status of permanent residence to certain aliens, having considered the same, reports favorably thereon with amendments and recommends that House Concurrent Resolution 201, as amended, do pass.

### AMENDMENTS

1. On page 2, strike out line 19.
2. On page 34, after line 4, add the following names:
   A-6967612, Chang, Chao-Kang.
   0300-447092, Li, Fei-Yu Lin.
   A-7841866, Li, Tieh Tseng.

### PURPOSE OF THE CONCURRENT RESOLUTION

The purpose of the concurrent resolution, as amended, is to record congressional approval of the granting of the status of permanent residence in the United States to certain refugees whom the Attorney General has determined to be eligible for such relief under the provisions of section 6 of the Refugee Relief Act of 1953 (67 Stat. 403), as amended by the act of August 31, 1953 (68 Stat. 1044). The resolution has been amended to delete the name of 1 alien at the request of the Immigration and Naturalization Service pending further consideration of the facts in the case, and to include the names of 3 aliens at the request of the House of Representatives.

## STATEMENT OF FACTS

Prior to August 31, 1953, section 6 of the Refugee Relief Act authorized the granting of the status of permanent residence in the United States to a limited number of aliens, not to exceed 5,000, who lawfully entered the United States as bona fide nonimmigrants prior to July 1, 1953, and because of events which have occurred subsequent to their entry are unable to return to their country of birth, or nationality, or last residence because of persecution or fear of persecution on account of race, religion, or political opinion. Public Law 751, 83d Congress, 2d session, amended section 6 by providing that otherwise eligible aliens must establish that, either by events which occurred prior to their entry or subsequent to their entry, they are unable to return to their country of birth, or nationality, or last residence, because of persecution or fear of persecution on account of race, religion, or political opinion.

The act provides that if the Attorney General shall, upon consideration of all the facts and circumstances of the case, determine that such alien has been of good moral character for the preceding 5 years and that the alien was physically present in the United States on the date of the enactment of the Act and is otherwise qualified under all other provisions of the Immigration and Nationality Act except that the quota to which he is chargeable is oversubscribed, the Attorney General shall report to the Congress all the pertinent facts in the case. If, during the session of the Congress in which a case is reported or prior to the end of the session of the Congress next following the session in which a case is reported, the Congress passes a concurrent resolution stating in substance that it approves the granting of the status of an alien lawfully admitted for permanent residence to such alien, the Attorney General is authorized, upon the payment of the required visa fee, which shall be deposited in the Treasury of the United States, to the account of miscellaneous receipts, to record the alien's lawful admission for permanent residence as of the date of the passage of such concurrent resolution. If, within the above specified time, the Congress does not pass such a concurrent resolution, or, if either the Senate or the House of Representatives passes a resolution stating in substance that it does not approve the granting of the status of an alien lawfully admitted for permanent residence, the Attorney General shall thereupon deport such alien in the manner provided by law.

Included in the concurrent resolution, as amended, are 703 names. In each case which is recommended for approval, a check has been made to determine whether or not the alien (*a*) has met the requirements of the law, (*b*) is of good moral character, and (*c*) is possessed of strong equities which would warrant the granting of the status of permanent residence.

The committee, after consideration of all the facts in each case, is of the opinion that the concurrent resolution (H. Con. Res. 201), as amended, do pass.

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Calendar No. 1950

84TH CONGRESS, 2d Session } SENATE { REPORT No. 1930

# HERMAN FLOYD WILLIAMS, BETTIE J. WILLIAMS, AND ALMA G. SEGERS

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 6137]

The Committee on the Judiciary, to which was referred the bill (H. R 6137) for the relief of Herman Floyd Williams, Bettie J. Williams, and Alma G. Segers, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

### PURPOSE

The purpose of the proposed legislation, as amended, is to authorize and direct the payment of $4,563.41 to Herman Floyd Williams, $8,500 to Bettie J. Williams, and $5,301.30 to Alma G. Segers, in full settlement of all claims of such persons against the United States on account of personal injury, death, property damage, and hospital and medical expenses resulting from the crash of a United States Air Force plane in the vicinity of the city of Marianna, Fla., on July 22, 1952.

### AMENDMENTS

1. Page 1, line 5, strike "Mr. and Mrs. Herman Floyd Williams" and insert in lieu thereof "Herman Floyd Williams and Bettie J. Williams of Marianna, Florida,".

2. Page 1, line 6, strike "sum of $16,097.26, to Mr. and Mrs. W. C. Segers" and insert in lieu thereof "sums of $4,563.41 and $8,500, respectively, to Alma G. Segers of Marianna, Florida,".

3. Page 1, line 7, strike "$5,000" and insert in lieu thereof "$5,301.30".

4. Page 2, line 12, insert "Amend the title so as to read: "An Act for the relief of Herman Floyd Williams, Bettie J. Williams, and Alma G. Segers."

STATEMENT

On July 22, 1952, a United States Air Force B–47-type aircraft, which had taken off from MacDill Air Force Base on a training mission, disintegrated in flight while at an altitude of from 5,000 to 7,000 feet. The cause of the disintegration could not be determined.

As a result of the disintegration, two children of the Williams family, Peggy Diane (age 5) and Rufus Floyd (age 2) were burned by flaming fuel and died in the local hospital about 2 hours later. Medical and hospital expenses for the deceased children amounted to $204.30 and their funeral expenses were $440.42.

Bettie J. Williams, the mother, suffered burns on the arms and right leg and her hair was scorched and burned. Her burns were first degree, with an occasional area of second-degree burns. She was hospitalized for about 30 hours following the accident and her burns healed without scar. In February 1953 she was examined by Government physicians who found no evidence of physical disability resulting from the accident, although she was still emotionally disturbed.

Alma G. Segers, who was visiting Mrs. C. H. Fort, the next-door neighbor of Williams, suffered first- and second-degree burns involving the upper back and both arms and was hospitalized for 15 days. Her hospital stay was extended for this period due to apprehension and nervousness. In February 1953 an examination by Government physicians showed scars remaining on her left and right arms. The scar on the right arm is most obvious and somewhat livid. The scars cause no physical disability, except for their cosmetic result. At that time, she still exhibited mental and emotional disturbances which could not be measured objectively with any degree of certainty. Her medical and hospital expenses amounted to $301.30.

In November 1952 suits were brought in the United States District Court for the Northern District of Florida under the Federal Tort Claims Act in behalf of Mr. and Mrs. Williams and Mr. and Mrs. Segers, aggregating approximately $200,000, for damages allegedly suffered by them as a result of the crash and ensuing fire. The two cases were combined for trial.

The United States district court, in a decision entitled *Williams, et al.* v. *United States* (115 F. Supp. 386), found against the plaintiffs. The principal theory of the plaintiffs' suit was based on the doctrine of res ipsa loquitor. Following the plaintiffs' introduction of their evidence, the assistant United States attorney, on behalf of the Government, made the following statement:

> May it please the court, I am instructed to inform the court that because the national security may be imperiled were they called to testify in this case, no witnesses will be called upon to testify in either of these cases.

He then proceeded to enter a motion for judgment, which was subsequently granted by the court in a memorandum decision dated October 24, 1953.

In the memorandum decision the court stated, inter alia, that the doctrine of res ipso loquitor did apply in the State of Florida but his

decision adverse to the plaintiffs was based on that provision of the Tort Claims Act contained in section 2680 (a), which excepts—

> Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Government, whether or not the discretion involved be abused.

In other words, the court followed the decision of the Supreme Court in *Dalehite* v. *United States* (346 U. S. 15), commonly known as the Texas City case.

In arriving at its decision the court took judicial notice of the fact that experimental flights were being conducted at MacDill Air Force Base.

On appeal to the United States Courts of Appeals for the Fifth Circuit, the court affirmed in a per curian decision (January 21, 1955, rehearing denied February 28, 1955), stating that the lower court erred in taking into consideration in arriving at the conclusion that the case fell within the exception of "discretionary function" by taking judicial notice of the fact that experimental flights were being conducted from MacDill Field. Nevertheless, the circuit court affirmed on the basis that, with respect to the doctrine of res ipsa loquitor, it is one that permits the inference of negligence to be drawn from the occurrence of an accident upon proof of certain facts. Generally stated, the doctrine is that, in the absence of an explanation by the defendant when a thing which causes injury is shown to be under the management and control of the defendant, and the accident is such as in the ordinary course of things does not happen if those who have its management use proper care, a sufficient basis is afforded for a finding and conclusion that the accident arose from want of care.

The court stated:

> It is not enough that the plaintiff show that the thing which injured him was in the exclusive control of the defendant, he must also show that the accident would not have occurred in the ordinary course of events if the defendant had exercised due care. Oftentimes experience in the particular situation is so uniform and well-established that it is not necessary to prove this by extraneous evidence. However, such is not the case here. We have no knowledge, judicial or otherwise, of what would cause a jet airplane to explode in midair while in flight. In the absence, as here, of evidence showing that such an accident would not occur except for negligence, there is no basis for recovery

The committee notes that in the decision of the trial court, the judge stated that there still remained a large segment of the population who still must appeal to Congress instead of the courts for relief where they have a legitimate claim against the Government and the court stated that these cases fall in that category.

The committee is in agreement with that portion of the opinion of the trial court, in that these citizens suffered substantial injuries and damages, through no fault of their own, as a result of the operation of

a governmental function, operating in the interest of all of the people of the United States and the defense of this country, and that the entire share of the burden of damages suffered should not fall upon these three people but should be shared in by the entire populace of the United States and, therefore, recommends that this legislation be enacted.

Information in the committee files indicates that substantial legal services have been rendered the claimant in connection with this claim and therefore the 10 percent attorney's fee provision has been retained. Further, the committee has also amended the bill so as to pay Mr. and Mrs. Williams separately inasmuch as correspondence in the committee files indicates that the Williams' are now separated and a portion of the award is to recompense Mrs. Williams for her personal injuries.

The committee has amended the bill to reduce the amounts to be paid in conformity with precedents in other similar cases.

Attached hereto for the information of the Senate is the report of the Secretary of the Air Force dated November 16, 1955.

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DEPARTMENT OF THE AIR FORCE,
OFFICE OF THE SECRETARY,
*Washington, November 16, 1955.*

Hon. HARLEY M. KILGORE,
*Chairman, Committee on the Judiciary,*
*United States Senate.*

DEAR MR. CHAIRMAN: Reference is made to your request for a report on S. 2208, 84th Congress, a bill for the relief of Herman Floyd Williams, Bettie J. Williams, and Alma G. Segers.

The purpose of the bill is to authorize and direct the payment of $10,000 to Herman Floyd Williams, $15,000 to Bettie J. Williams, and $5,000 to Alma G. Segers in full settlement of all claims of such persons against the United States on account of personal injury, death, and property damage caused by the crash of a United States Air Force aircraft in the city of Marianna, Fla., on July 22, 1952.

On said date, a United States Air Force B–47-type aircraft, which had taken off from MacDill Air Force Base on a training mission, disintegrated in flight while at an altitude of 7,000 feet. The cause of the disintegration could not be determined.

As a result of the disintegration two children of Herman Floyd and Bettie J. Williams, Peggy Diane Williams (age 5) and Rufus Floyd Williams (age 2) were burned by flaming fuel and expired about 2 hours later. The medical and hospital expenses for the deceased children amounted to $204.30 and their funeral expenses were $440.42.

Bettie J. Williams suffered burns on the arms and right leg and her hair was scorched and burned. Her burns were first degree with an occasional area of second-degree burns. She was hospitalized for about 30 hours following the accident and her burns healed without scar. Her medical and hospital expenses amounted to $33.85. In February 1953, she was examined by Government physicians who found no evidence of physical disability from trauma associated with the aircraft accident although she was still emotionally disturbed.

Alma G. Segers suffered first- and second-degree burns involving the upper back and both arms and was hospitalized for 15 days. Her

hospital stay was extended for this period due to apprehension and nervousness. An examination by Government physicians in February 1953, showed scars remaining on her left and right arms. The scar on the right arm is most obvious and somewhat livid. The scars cause no physical disability or limitation of activities, except for their cosmetic result. At that time, she still exhibited mental and emotional disturbances which could not be measured objectively with any degree of certainty. Her medical and hospital expenses amounted to $301.30.

Mr. Williams did not suffer any personal injuries as a result of the accident, but alleges that he sustained a personal-property loss in the amount of $418.69.

In November 1952, Mr. and Mrs. Williams brought suit against the United States under the Federal Tort Claims Act in the United States District Court for the Northern District of Florida in the amount of $157,918.69 for the death of their 2 children, the personal injury suffered by Mrs. Williams, loss of consortium and property damage sustained by Mr. Williams, and for medical, hospital, and funeral expenses. Mr. and Mrs. Segers also brought suit in the same Federal court and claimed damages for $30,000 for personal injury sustained by Mrs. Segers, for loss of consortium by Mr. Segers, and for medical and hospital expenses. The two cases were combined for trial.

The United States district court in a decision entitled "*Williams, et al.* v. *United States* (115 F. Supp. 386)," found against the plaintiffs. The United States Court of Appeals for the Fifth Circuit (in 218 F. 2d 473) confirmed the decision of the district court on the grounds that the plaintiffs failed to establish negligence on the part of any officer or employee of the United States so as to impose liability on the United States under the Federal Tort Claim Act.

The effect of the proposed private bill is to give a remedy to parties injured as a result of activities of the Air Force when the courts have determined that the United States is not liable under the Federal Tort Claims Act. The Department of the Air Force has no objection to enactment of S. 2208 recompensing the claimants in amounts considered by the Congress to be just and reasonable.

The Bureau of the Budge advised that it does not object to the submission of this report.

Sincerely yours,

DAVID S. SMITH,
*Assistant Secretary of the Air Force.*

January 17: Congressman Fascell called and asked that the House committee be given the following information:

Chapter 768.03, Florida Statute, which deals with parties who may present actions for the death of a minor child and that statute provides:

> Whenever the death of any minor child shall be caused * * * the father of such minor child, or if the father be not living, the mother may maintain an action against such individual * * * and may recover not only for the loss of services of such minor child, but in addition thereto such sum for the mental pain and suffering of the parent, or both parents, if they survive.

## Statement of Facts

*Herman Floyd Williams and his wife, Bettie J. Williams* v. *United States of America*

On July 22, 1952, about 7:25 a. m., a jet aircraft was heard over the city of Marianna, Fla. It appears the plane was in difficulty and, according to witnesses, it was emitting a rumbling sound. The plane was seen in the air and had fire and smoke streaming from its right wing. In a matter of seconds after the plane was seen in this condition, a terrific explosion was felt. The plane disintegrated over the city of Marianna. Following the explosion, falling parts of the plane were subsequently located over an area of approximately 4 square miles.

The explosion caused the wings, engines, and other parts to shear themselves from the fuselage of the plane. The fuselage did not catch fire. All four of the occupants in the plane were killed either by the force of the explosion or upon the fuselage crashing to the ground.

On the morning of July 22, 1952, Bettie J. Williams, the wife of Herman Floyd Williams, was working in the yard of their home attending to some rose bushes. Her husband had left home to attend Chipola Junior College where he was receiving schooling under the GI benefit bill. Her home was located approximately 300 feet from Jackson Hospital, a hospital operated and maintained for the benefit of the people of Jackson County, Fla.

With the explosion of the plane, Mrs. Williams became frightened and, according to her statement, thought the world was coming to an end. She ran into her home to gather up her 3 children—2 boys and 1 girl. One of the boys was in the house but she could not find the other two. She ran out the front of the house with 1 child to look for the other 2 children. About the time she got out of the house, there was a terrific explosion, the force of which knocked her and the child with her down. According to her description, the whole area appeared to be covered with flame. She immediately got up and began looking for her other two children. She was stopped by Reverend Fort from going back into her home to see if she could find them. She then began to wander around looking for them.

With the explosion and flame on the ground, Mr. John H. Williams, who lived a short distance from the Herman Floyd Williamses, began looking around for his children who frequently played with the Herman Floyd Williams children. He ran toward the Herman Floyd Williams home and, according to his testimony before the trial court, the whole area was covered in flame as a result of the explosion in the backyard of the Williams home. He heard a child crying and went into the flame, found one child and brought it out and, leaving it with his son to hold, he again entered the flame to see if there were others there. He found another child and brought it out. These were the two children of Herman Floyd Williams and his wife, Bettie J. Williams. He reentered the fire to see whether or not his child was there and, not finding the child, he returned to his son, and with his son carried the Herman Floyd Williams children to the Jackson Hospital. According to his testimony, the children were burned about to a crisp, their skin was parched, and their clothing was burned off.

In the meantime, Mrs. Bettie J. Williams, wandering around looking for her children, came to the home of John H. Williams and asked Mrs. John H. Williams if they had seen Rufus Floyd and Peggie Diane. She was told to go to the hospital immediately. She ran to the hospital and, upon entering the emergency room, saw her two children, who had been burned so horribly, being given treatment by the hospital staff. She immediately fainted.

Approximately 2 hours later, even though the staff had rendered every possible assistance, the two children died. According to the testimony of the doctors, they were so severely burned that it was impossible to give them transfusions intravenously.

Mrs. Williams was in such a condition, emotionally and otherwise, that she remained in the hospital until just before the funeral for the children.

In addition to the loss of their two children, this young couple lost all of their household furnishings and fixtures as a result of the explosion and fire that occurred on the ground, where a part, presumably the fuel tank, fell and exploded. The amount of damages to household furnishings and equipment sustained, according to appraisals made, amounted to $418.69. This appraisal was arrived at by taking the value of the items prior to the fire and comparing that to the value after the fire. The Williamses did not own their home, but were renting the same from Rev. C. H. Fort.

In addition to the loss incurred, there was a further expense relative to Rufus Floyd Williams for professional services of doctors, Jackson Hospital bill, Maddox Funeral Home, and for clothes for the burial of the child in the amount of $336.38. For the child, Peggie Diane Williams, the total amount of medical, hospital, funeral, and clothing expenses for the burial was $333.34.

Subsequent to the death of her children, due to her physical and emotional condition, it was necessary for Mrs. Williams to undergo an operation, a result of which is that she will not be able to have other children. The expense for medical and hospitalization for Mrs. Williams was $33.85. Further additional expense was incurred by Mrs. Williams as the Air Force requested an opportunity to examine her and the right of consultation with her physician. Also her physician appeared before the court and testified and consulted with her attorneys, for which services he submitted a statement for total fee of $50.

It is to be pointed out that in this case, the two children were not in the street at the time of the explosion but rather in their own backyard playing. Even their pet dog and cat, with whom they were playing, were burned to death as a result of the explosion.

The Williamses were without means other than a small salary Mr. Williams received in addition to his GI benefits. They were and have been without means to pay any of the expenses incurred as a result of this tragic occurrence. At no time has the Air Force, or its representative, or the Government's attorney offered any amount in settlement of their losses, other than to advise them that the Government would pay their actual expenses incurred if they chose to accept that in settlement but that nothing would be paid for the loss of the children except the hospital and funeral expenses.

Immediately after the explosion occurred Air Force authorities descended upon the city of Marianna en masse. They requested that

all parts and fragments of the plane, which were scattered over a vast area, be brought in so the cause of the accident could be determined. The fuselage containing the bodies of the four occupants was located approximately 100 yards from the Herman Floyd Williams home. The general public were advised Air Force authorities, together with authorities from all investigating agencies relative to aircraft accidents, were present. No public announcement was made as to the cause of the fire, explosion, or disintegration of the plane.

Suit was instituted by the Williamses in the United States District Court in and for the Northern District of Florida, under the Federal Tort Claims Act. Interrogatories were propounded as to whether or not the plane had been under the care, inspection, and maintenance of the Air Force prior to the commencement of the flight, and if, in flight, it was under the care, custody, and control of the officers of the Air Force within their scope of authority. The Government answered these interrogatories in the affirmative. In answer to the complaint the Government further stated that "despite extensive investigation on behalf of the defendant (the cause) is unknown, and, that, therefore, defendant alleges its (plane) disintegration and crash to have been the result of an unforeseeable and indeterminable malfunctioning of said airplane; an accident of completely unknown cause, source, and origin." The Government offered no testimony whatsoever in this case to deny liability for any cause or to controvert any of the damages or negligence.

After the issues were made but before the trial of this case, the United States Supreme Court decided the case of *Dalehite* v. *United States* (the Texas City case). The district court, in its memorandum decision, took the position that as this airplane was from McDill Air Force Base, Tampa, Fla., where experimental operations were conducted by the Air Force, and as experimental operations were Cabinet decisions and did not come within the operation of the tort claim, therefore the court had no jurisdiction in this case as a result of the Dalehite case. It is to be pointed out that there was not one scintilla of evidence in this case that the plane came from McDill Field, that it was on an experimental operation, or any other factors that would bring it within the scope of the Dalehite decision.

The trial court further stated in its memorandum opinion that if it had jurisdiction to handle the case, the case would certainly come within the doctrine of res ipsa loquitur as defined by the laws of the State of Florida, but since the Dalehite case removed the case from its jurisdiction, the court, according to its opinion, gave judgment to the Government. The case was appealed in the Circuit Court of Appeals for the Fifth Circuit and in the opinion rendered by that court, it held in substance that the trial court was in error in finding that the flight originated at McDill, that the plane was on experimental flight, and that the Dalehite case prohibited the trial court from taking jurisdiction. It further held that the defendants had failed to prove their case for the reason they had not shown the cause of fire and explosion. There was no earthly way for the defendants to prove the cause of the fire when the Government, with all of its funds and resources and after extensive investigation, has been unable to determine the cause of the fire and explosion.

This mother and father have not but one recourse and that is by way of relief direct from Congress for the extreme loss they have sustained.

The Congress now has the responsibility of determining what value shall be placed on the loss these two parties have sustained through absolutely no fault of their own. They have suffered an irreparable injury. They can have no more children to replace those whose lives were burned away through the malfunctioning of the Government's airplane while playing in what is supposed to be the safest place in the world, their own backyard. Certainly, a Government that has been so liberal in all other things will look with favor upon one of its service veterans and his wife and will be liberal in its attempts to overcome the loss they have sustained. Nothing will ever erase from the mind of this mother the last sight she had of her children burned to a crisp, lying in the emergency room of the hospital crying with pain.

This is not an ordinary compensation case but one in which the Government should show its generosity.

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## Statement of Facts

*Alma G. Segers and her husband, W. C. Segers* v. *United States of America*

On July 22, 1952, about 7:25 a. m., a jet aircraft was heard over the city of Marianna, Fla. It appears the plane was in difficulty and, according to witnesses, it was emitting a rumbling sound. The plane was seen in the air and had fire and smoke streaming from its right wing. In a matter of seconds after the plane was seen in this condition, a terrific explosion was felt. The plane disintegrated over the city of Marianna. Following the explosion, falling parts of the plane were subsequently located over an area of approximately 4 square miles.

The explosion caused the wings, engines, and other parts to shear themselves from the fuselage of the plane. The fuselage did not catch fire. All four of the occupants in the plane were killed either by the force of the explosion or upon the fuselage crashing to the ground.

On the morning of July 22, 1952, Alma G. Segers was eating breakfast at the home of Reverend Fort, whose home was next door to the home occupied by Herman Floyd Williams and his wife. Mrs. Segers had spent the night at Jackson Hospital sitting up with her son, who was confined in the hospital. The hospital was approximately 300 feet from the home of Reverend Fort. At about 7:25 o'clock, the Forts and Mrs. Segers had finished breakfast and were sitting around the breakfast table exchanging the pleasantries of the day when there was a terrific explosion that shook the house, rattled the dishes, and was of such force that the Forts and Mrs. Segers rushed from the house fearing that it might be an earthquake or other catastrophe. The thought of an earthquake came to mind as there had recently been a very severe earthquake in California, the details of which had filled the papers and news broadcasts.

About the time Mrs. Segers got out of the house there was another explosion on the ground caused by the fuel tanks of the plane which fell between the Fort and Williams' home. The whole area was covered by fire and intense smoke. The searing flash, fire, flame, and heat wave that followed the explosion inflicted severe burns on Mrs. Segers' body. The burns were such that the color pattern of her

dress was transferred to her body in that the burned area reflected the dark and light spots of the coloration. She received burns about her arms and back, mostly on her back. Her hair was singed.

Mrs. Segers was rushed to the hospital where she received first-aid treatment and was admitted to the hospital. She suffered from extreme hysteria in addition to her burns.

As a result of the explosion she became extremely nervous and was unable to continue her employment at the Florida State Hospital at Chattahoochee, Fla., where she had been gainfully employed approximately 6 weeks prior to the accident.

Prior to Mrs. Segers entering upon her employment at the Florida State Hospital at Chattahooche, Fla., she had received a physical examination and as a result of that examination was found to be in good physical condition and of such emotions as to make her qualified to work as an employee at this State institution for the insane. Subsequent to the explosion, she was unable, because of her nervous and emotional condition as a result of the accident, to hold employment at the Florida State Hospital. Her nervous condition is such that on those occasions when jet planes fly over, she enters a state of hysterics. This condition continues to exist.

Prior to the accident Mrs. Segers was receiving $116 per month plus room, board, and laundry, if desired, by the State of Florida for her employment. She also received limited medical attention. As a result of the accident Mrs. Segers incurred a bill for the sum of $195.30 at Jackson Hospital and a bill for $173 as expenses for services of her physician, Dr. Jabe A. Breland.

This lady was gainfully employed and assisting her husband in meeting the expenses of their family and home. As a result of this accident, over which she and her husband had absolutely no control, she has lost her ability to contribute further to the financial well-being of herself and her family. This condition was brought about by the malfunctioning of a Government airplane. Certainly this Government, which seeks to better conditions of all of its citizens and to increase opportunity for everyone, will recognize the damage that has been done to this lady and her family and compensate her for the loss she has sustained. She has a life expectancy of approximately 27 years, and presumably could have continued her employment for many years before she would have retired at part pay. As a result of the Government's operation of this plane, she not only sustained great pain and suffering but has lost her employment and such retirement benefits as she would have been entitled to as an employee of the State of Florida.

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Calendar No. 1952

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1932

# EDWIN K. STANTON

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. O'MAHONEY, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 2057]

The Committee of the Judiciary, to which was referred the bill (H. R. 2057) for the relief of Edwin K. Stanton, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

### AMENDMENT

On page 2, line 3, strike the words "in excess of 10 per centum thereof".

### PURPOSE

The purpose of the proposed legislation, as amended, is to authorize payment of the sum of $254 to Edwin K. Stanton, of Atlanta, Ga., in full settlement of all his claims against the United States for reimbursement of losses alleged to have been sustained while employed by the Fish and Wildlife Service as a weir attendant on the Klaskas Lake stream in Alaska in the month of September 1948.

### STATEMENT

Records of the Fish and Wildlife Service of the Department of the Interior reveal that a camp was established in 1948 for the use of personnel attending the Klaskas Lake stream weir on southwest Prince of Wales Island, Alaska. The camp consisted of a tent erected on a wooden frame of 2 by 2's and a wooden floor. A fly extended over the tent and over the area in front of the tent forming a porch. All gear including personal belongings of the personnel generally was stored inside the tent. A wood-burning stove was furnished for use as a space heater. The stove was placed on the lid of an oil drum that had been filled with several inches of gravel to insulate it from the floor. The stovepipe led out through an opening in the tent wall large enough to provide clearance of about 3 inches and thus prevent contact between the stovepipe and the tent wall.

The camp was utilized by two crews in succession from July 15 until it was destroyed by fire on September 21, 1948. During all that time the stove was used almost continuously because of cold wet weather conditions in this area.

According to the claimant, Mr. Stanton, the fire occurred in the following manner: At 1410 Mr. Brewington and Mr. Stanton went to the weir to make routine observations. At 1450 several shots were heard from the neighborhood of the campsite 1,000 feet downstream. Shortly thereafter a fusillade was heard from the same locality. Mr. Brewington and Mr. Stanton returned to the campsite as quickly as possible to investigate and found the entire camp in flames and the ammunition in the tent exploding. By the time they were able to put out the fire by buckets of water from the stream 25 feet away the tent and the majority of gear were almost completely consumed by the fire. After salvaging what little gear was left, they investigated the cause of the fire. The wood floor of the tent was badly charred, but burned through only in the area underneath the small sheet metal wood stove. It was consequently assumed that the fire had started at this place.

It was deduced that the constant fire had dried out the floor in the area directly beneath the stove and that the floor in that area was heated to the flash point despite the precautions of the insulation of the gravel and the oil drum lid.

According to a report filed by the claimant with the Department of the Interior, the value of the personal belongings lost as a result of the fire was fixed by ascertaining the price of similar items on the retail market in Seattle as of November 1948. The Department of the Interior concludes that the estimates are reasonable.

The Department of the Interior recommends enactment of legislation to reimburse the claimant for the losses sustained. The committee is in agreement with the recommendation of the Interior Department and, therefore, recommends favorable consideration of this bill, H. R. 2057, as amended.

Attached hereto and made a part hereof is the report submitted by the Interior Department on a similar bill of the 82d Congress and other evidentiary data relating to this claim.

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UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
*Washington 25, D. C., July 23, 1952.*

Hon. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,*
*House of Representatives, Washington 25, D. C.*

MY DEAR MR. CELLER: Reference is made to your request for a report on H. R. 2835, a bill for the relief of Edwin K. Stanton.

I recommend enactment of the proposed bill.

The legislation would authorize and direct the payment to Edwin K. Stanton of Atlanta, Ga., the sum of $254 in settlement of all claims by Mr. Stanton against the United States arising out of losses alleged to have been sustained while employed by the Fish and Wildlife Service as a weir attendant on the Klakas Lake stream in Alaska in the month of September 1948.

According to the records of the Fish and Wildlife Service of this Department, a camp was established in 1948 for the use of personnel attending the Klakas Lake stream weir on southwest Prince of Wales Island, Alaska. The camp consisted of a tent erected on a wooden frame of 2 by 2's and a wooden floor. A fly extended over the tent and over the area in front of the tent forming a porch. All gear including personal belongings of the personnel generally was stored inside the tent. A wood-burning stove was furnished for use as a space heater. The stove, described as a sheet metal rectangular box of about 10 by 24 by 8 inches, was placed on the lid of an oil drum that had been filled with several inches of gravel to insulate it from the floor. The stovepipe led out through an opening in the tent wall large enough to provide clearance of about 3 inches and thus prevent contact between the stovepipe and the tent wall.

The camp was utilized by two crews in succession from July 15 until it was destroyed by fire on September 21, 1948. During all that time the stove was used almost continuously because of cold wet weather conditions in this area.

According to the claimant, Mr. Stanton, the fire occurred in the following manner: "At 1410 Mr. Brewington and Mr. Stanton went to the weir to make routine observations. At 1450 several shots were heard from the neighborhood of the campsite 1,000 feet downstream. Shortly thereafter a fusillade was heard from the same locality. Mr. Brewington and Mr. Stanton returned to the campsite as quickly as possible to investigate and found the entire camp in flames and the ammunition in the tent exploding. By the time they were able to put out the fire by buckets of water from the stream 25 feet away the tent and the majority of gear were almost completely consumed by the fire. After salvaging what little gear was left, they investigated the cause of the fire. The wood floor of the tent was badly charred, but burned through only in the area underneath the small sheet metal wood stove. It was consequently assumed that the fire had started at this place.

"It was deduced that the constant fire had dried out the floor in the area directly beneath the stove and that the floor in that area was heated to the flash point despite the precautions of the insulation of the gravel and the oil drum lid."

According to a report by Mr. Stanton, the value of the personal belongings lost as a result of the fire was fixed by ascertaining the price of similar items on the retail market in Seattle as of November 1948. It appears that the estimates are reasonable.

I have been informed by the Bureau of the Budget that there is no objection to the submission of this report to your committee.

Sincerely yours,

MASTIN G. WHITE,
*Acting Secretary of the Interior.*

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UNITED STATES DEPARTMENT OF THE INTERIOR,
FISH AND WILDLIFE SERVICE,
*Atlanta 3, Ga., January 22, 1951.*

Hon. JOSEPH C. DAVIS,
*House of Representatives, Washington, D. C.*

MY DEAR MR. DAVIS: The enclosed claim and correspondence pertinent to it which are self-explanatory have lain idle because of my lack of knowledge of correct procedure to obtain settlement of the claim.

Recently I have been informed that it is necessary to submit such claims to Congress in order that the Congress may appropriate funds to settle such claims.

Would it be possible for you to introduce my claim in whatever manner is proper under the circumstances.

Sincerely,

E. K. STANTON,
*Fishery Research Biologist, River Basin Studies.*

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OFFICE MEMORANDUM, UNITED STATES GOVERNMENT

DECEMBER 21, 1948.

To: George B. Kelez, Supervisor of Fisheries, Seattle, Wash.
From: Administrative Officer, Fish and Wildlife Service, Juneau, Alaska.
Subject: Claim of Edward K. Stanton.

Reference is made to your November 4 memorandum to us and attachments representing reports of loss of personal effects and equipment submitted by Mr. Edward K. Stanton.

Copies of the claim were submitted to Washington as enclosures of our November 23 memorandum, a copy of which was furnished your office. The Service has disallowed the claim and there is attached hereto a copy of Mr. Gardner's memorandum which is self-explanatory. Please advise Mr. Stanton accordingly.

M. J. FURNESS.

OFFICE MEMORANDUM, UNITED STATES GOVERNMENT

DECEMBER 13, 1948.

To: Regional Director, Juneau, Alaska.
From: Acting Director.
Subject: Fire, Klakas Lake Camp and claim for loss of personal effects, Edward K. Stanton.

Reference is made to Mr. Furness' memorandum of November 23, 1948, transmitting the claim of Mr. E. K. Stanton, an employee of our Service, in the amount of $254 representing the value of personal effects destroyed by fire at a field camp.

I regret to advise that, after careful consideration, it does not appear that such a claim is cognizable under any law known to us.

A complete report of the fire, as required by section 1735 of the Field Manual of Administration, should be submitted to this office as soon as possible.

JOHN R. GARDNER.

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OFFICE MEMORANDUM, UNITED STATES GOVERNMENT

NOVEMBER 23, 1948.

To: Director, Fish and Wildlife Service, Washington, D. C.
From: Administrative Officer, Juneau, Alaska.
Subject: Edward K. Stanton, claim for loss of personal clothing and equipment.

Attached is the original, including an aerial photograph of Klakas Lake Stream, and one carbon copy of original letter having to do with the above subject, and which is self-explanatory. In view that no specific form of procedure is prescribed covering such matters, it is presumed that you will take whatever action may be appropriate.

If additional information is needed, we shall be glad to supplement reports of loss and claim for reimbursement upon request.

M. J. FURNESS.

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OFFICE MEMORANDUM, UNITED STATES GOVERNMENT

To: Regional Director, Juneau, Alaska.
From: Supervisor of Fisheries, Seattle, Wash.
Subject: Claim of Edwin K. Stanton.

Enclosed, herewith, are the original and two copies of a report of losses of personal clothing and equipment submitted to me by Mr. Edwin K. Stanton.

This claim arises from a fire occurring in a temporary weir camp at Klakas Inlet in southeastern Alaska on September 21, 1948. It would appear that negligence has not been shown to exist in connection with the origin of this fire.

In regard to claims of the nature which have previously arisen in the course of operations in Alaska, we have been advised by the administrative officer, region 1, that no specific form or procedure is outlined for losses which do not include negligence on the part of Federal employees. However, we are also advised that such claims should be forwarded through the Service and that they would be presented by the Solicitor to the General Accounting Office. I am, therefore, forwarding the claim of Mr. Stanton for such action.

GEORGE B. KELEZ.

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UNITED STATES DEPARTMENT OF THE INTERIOR,
FISH AND WILDLIFE SERVICE,
*Seattle 2, Wash., November 3, 1948.*

Mr. GEORGE B. KELEZ,
*Chief, Alaska Fisheries Investigations, Seattle 2, Wash.*

DEAR MR. KELEZ: On September 21, 1948, at 1450 while on official duy as weir attendant at the Klakas Lake Stream weir, by reason of official assignment, the attached listed personal property valued at $254 as itemized was destroyed by fire. I herewith submit a claim against the United States for reimbursement in the amount of $254 for replacement of the items destroyed by the fire.

A weir was established on July 15, 1948, in the Klakas Lake Stream, Klakas Inlet, southwestern Prince of Wales Island, Alaska, to determine the number and species of salmon which are capable of surmounting the two falls in the mouth of the stream. A camp was established near the mouth of the stream adjacent to

the tide flat at the same time. See the attached aerial photograph. The camp consisted of one tent erected on a wooden frame of two by two's and a wooden floor. A fly extended over the tent and over the area in front of the tent forming a porch. Virtually all gear was stored inside the tent. The wood stove supplied by the Service for use as a space heater was a single thickness, thin, sheet-metal, rectangular box about 10 by 24 by 8 inches, without legs. The lid of an oil drum had been filled with about 2 inches of gravel and placed under the stove to insulate it from the floor. A stovepipe was attached and led outside through an opening in the tent wall. The opening in the tent was large enough so that there was a clearance of about 3 inches on all sides and there was consequently no contact at any point.

The weir was attended by Mr. N. B. Young, and Mr. Pau Gerstmann from July 15 until September 17, 1948. These gentlemen used the stove under the above-described conditions during that period. On September 17, 1948, Mr E. K. Stanton and Mr. W. O. Brewington replaced Messrs. Young and Gerstmann as weir attendants. They continued to use the stove under the same conditions and maintained a fire in it 24 hours a day in an attempt to keep the tent and gear warm and dry. It was used in this manner from July 15, 1948, until September 21, 1948, without giving any evidence of setting fire to the floor.

The fire occurred in the following manner. At 1410 Mr. Brewington and Mr. Stanton went to the weir to make routine observations. At 1450 several shots were heard from the neighborhood of the camp site 1,000 feet downstream. Shortly thereafter a fusillade was heard from the same locality. Mr. Brewington and Mr. Stanton returned to the campsite as quickly as possible to investigate and found the entire camp in flames and the ammunition in the tent exploding. By the time they were able to put out the fire by buckets of water from the stream 25 feet away, the tent and the majority of gear were almost completely consumed by the fire. After salvaging what little gear was left they investigated the cause of the fire. The wood floor of the tent was badly charred but burned through only in the area underneath the small sheet metal wood stove. It was completely assumed that the fire had started at this place.

It was deduced that the constant fire had dried out the floor in the area directly beneath the stove and that the floor in that area was heated to the flash point despite the precautions of the insulation of the gravel and the oil drum lid.

The weather at Klakas is very inclement. The rainfall is in the neighborhood of 225 inches per year. It is necessary to have a large supply of heavy clothes and rain gear. It is a remote locality being 50 miles from the nearest habitat which is the small Indian village of Hydaburg.

The personal gear in my possession at the time was necessary for the prosecution of my duties as an aquatic biologist engaged in stream improvement survey.

It is my opinion that no negligence existed. The stove had been operated in an identical manner for 2 months and there was no reason to assume it would not continue to operate safely for a longer period. The stove was inadequate and cheaply constructed. A kerosene space heater should have been provided.

No private or personal insurance was carried. The value of the articles listed was determined by comparison with similar items on the retail market in Seattle, Wash., at the present time.

Very truly yours,

EDWIN K. STANTON, *Aquatic Biologist.*

Personal property of Edwin K. Stanton destroyed by fire at 1450 on September 21, 1948, at Klakas Lake Stream Weir camp, Prince of Wales Island, Alaska:

| | |
|---|---|
| 1 brief case, leather, bag type, 3 sections | $20.00 |
| 1 pen, Parker 51 | 12.50 |
| 1 stamp set, rubber | 2.00 |
| 1 address book, leather with index sheets, loose leaf, 2 by 4 inches | 5.00 |
| 1 notebook, leather, 3 ring, 4½ by 7 inches | 5.00 |
| 1 pilot's navigation kit, leather with zipper | 7.00 |
| 1 computer, D–4 air navigation | 1.50 |
| 1 slide rule, 12 inches | 5.00 |
| 1 flashlight, pencil 2 cell | 1.50 |
| 1 Weems air navigation plotter | 1.00 |
| 1 Musette bag, canvas | 1.00 |
| 1 parachute bag, canvas | 3.00 |
| 4 trousers, cotton khaki at $3.75 | 15.00 |
| 1 trousers, wool o. d | 5.00 |
| 1 trousers, foul weather gear, United States Navy | 2.00 |
| 2 shirts, dress khaki at $3 | 6.00 |
| 1 shirt, dress white | 4.00 |
| 6 shirts, skivies at $1 | 6.00 |
| 6 shorts, men's white at $1 | 6.00 |
| 10 handkerchiefs at $1 | 10.00 |
| 1 toilet kit, leather | 15.00 |
| 1 brush, hair | 5.00 |
| 1 comb | 1.00 |
| 1 razor, Stahly, automatic "stroke saver" | 20.00 |
| 1 razor sharpener | 2.50 |
| 1 brush, shaving | 5.00 |
| 1 fingernail set, in leather case | 5.00 |
| 3 stockings, wool at $1 | 3.00 |
| 6 stockings, cotton at $0.75 | 4.50 |
| 1 shoes, leather | 5.00 |
| 1 shoes, leather, crepe soles | 15.00 |
| 1 clock, alarm, "Ebosa" | 5.00 |
| 1 writing case, leather | 5.00 |
| 1 kodak handbook with new enclosures | 5.00 |
| 1 jacket, Army A–2 | 20.00 |
| 1 jacket, Navy foul weather | 2.00 |
| 1 glasses, sun | 7.50 |
| 1 sweater, wool, pullover | 10.00 |

I certify that the above list constitutes the personal equipment lost while in the conduct of official business on September 21, 1948.

EDWIN K. STANTON.

STATE OF WASHINGTON,
*County of King, ss:*

Subscribed and sworn to before me this 3d day of November 1948.

WALTER M. BOSWORTH, Jr.,
*Notary Public.*

My commission expires Nov. 18, 1950.

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OREGON CITY, OREG., *April 8, 1954.*

Hon. JAMES C. DAVIS,
*Member of Congress, New House Office Building,*
*Washington, D. C.*

DEAR JUDGE DAVIS: Your letter of February 10, 1953, with reference to the bill H. R. 703, which you have so kindly introduced in my behalf, and Congressman Forrester's letter of February 9, 1953, asking for further information regarding this bill have been unanswered due to being abroad a considerable time and not having access to the correspondence and papers necessary to provide the information desired. I hope my long delay in answering you will not jeopardize my chance of settlement of my claim.

In answer to Congressman Forrester's letter of February 9, 1953, the following information is furnished:

1. On September 17, 1948, I was a salaried man employed by the United States Department of the Interior, Fish and Wildlife Service, as an aquatic biologist, P–2. On the same date I was on inactive duty as a Reserve officer of the United States Air Force but not receiving any payment therefor.

2. My monthly, gross salary on September 17, 1948, was $143.72 ($3,852.60 per annum) when based in the continental limits of the United States and $163.32 ($4,815.75 per annum) when based in Alaska.

3. I did not have insurance to protect me against loss by fire. I was informed such insurance, floater premiums were excessively high. Whether I was insurable and the exact amount of such premiums were not determined. The assignment to duty as weir attendant at Klakas Inlet was made quite unexpectedly while I was at sea aboard a Fish and Wildlife vessel in Alaska, which virtually precluded the possibility of obtaining such insurance if it were available to me.

4. Mr. Brewington did lose his personal effects in the same manner as I.

5. I am not aware of Mr. Brewington's action in regard to making a claim for damages. At that time both of us were unaware of the proper procedure for making such a claim.

6. I did not understand that I was assuming the possibility of loss by fire while located in a remote region at the time of assuming my work as a weir attendant at Klakas Inlet. Such possibility is of course now apparent as would be such loss at sea, although more adequate precautions are taken aboard vessels of the Service. I did understand, from prior Government service, that the United States Government does not insure its own property, maintaining that the cost would be prohibitive as compared to replacement value. It is my contention that an employee required to work under such conditions and required to provide his own gear should be provided recourse to reclaim losses incurred by such duty.

7. I do not believe that I claimed the Government was negligent in not providing a kerosene heater in lieu of a wood stove in my letter of November 3, 1948. However, this matter of wood versus kerosene stoves was discussed previously during the spring of 1948, at the Seattle headquarters, when planning the establishment of the weir camp at Klakas Inlet for the weir attendants Messrs. Young and Gerstmann. It was planned at this time that the weir count would be discontinued, and the camp broken, before September. However the salmon run was late that year and Messrs. Young and Gerstmann had to return to Seattle to attend school. Consequently Mr. Brewington and I were assigned to complete the weir count until the end of the salmon upstream migration.

From previous experience in camping out, and particularly in Alaska, I urged that a kerosene space heater be provided for such temporary camps. However, due to budgetary limitations it was decided to use the wood stove on hand. Dry wood, which will burn in such a wood stove, is difficult and time consuming to obtain. It is necessary to keep a wood fire going 24 hours a day to keep such a camp tent, clothing and bedding dry and to cook on. When wet or green wood is used it smolders until it dries out and then when dried by fire and when it reaches its flash-point it burns rapidly and with great heat for a short period of time. A kerosene stove is much more controllable and consequently safer because no sudden, high heat is developed.

The wood fire was maintained during our absence because of a current cold, rainy storm and the fact that it sometimes took us more than an hour to start a new fire. Normally one of us would have remained in camp, but due to the storm we both were needed at the weir to clean the debris which had been carried downstream by the storm off the weir in order that the pressure from headwater caused by the debris would not carry away or wash out the weir. Such damage to the weir would have allowed an unknown number of salmon to escape upstream and invalidate an entire summer's work.

Among all our possessions in the tent only two items did not burn. One was a half gallon can of kerosene about 3 feet away from the stove and a can of peaches. All other canned foods exploded and other items ignited.

8. Only the floor underneath the stove and immediately adjacent to it was burned, evidently because only that area had been dried by the stove to a degree sufficient to burn. The remainder of the floor was quite damp being in immediate contact with the wet, soggy, tundralike ground beneath. Apparently when the area of floor beneath the stove and adjacent to it ignited, the canvas tent sidings above it were set on fire. The floor adjacent to the stove probably was soaked with grease spattered there from frying and cooking on the stove which is another reason that only that area of floor burned and provided enough heat and flame to ignite the tent.

Congressman Forrester's reasons for seeking the above information are quite understandable. I trust the above explanations are adequate without going into more detail. It is difficult to explain all the difficulties attendant to camp life in a southeastern Alaska rain forest. My contentions regarding the cause of the fire are only my own deductions from the burned remains. They seem logical to me, but I am not a trained fire inspector. If further information is desired I shall be glad to elucidate.

Your continued interest and help in regard to this claim are greatly appreciated. I am enclosing a carbon copy of this letter for Congressman Forrester.

Sincerely yours,

E. K. STANTON.

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Calendar No. 1953

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1933

# MARY J. McDOUGALL

APRIL 30 (legislative day, APRIL 26), 1956.—Ordered to be printed

Mr. O'MAHONEY, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 3366]

The Committee on the Judiciary, to which was referred the bill (H. R. 3366) for the relief of Mary J. McDougall, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

### AMENDMENTS

1. On page 1, line 6, following the comma, insert "of Napakiak, Alaska,".
2. On page 1, line 8, after the word "quarters" insert "at Napakiak, Alaska".
3. On page 1, lines 10 and 11, strike the words "in excess of 10 per centum thereof".

### PURPOSE

The purpose of the proposed legislation, as amended, is to authorize payment of the sum of $631.99 to Mary J. McDougall, of Napakiak, Alaska, in full settlement of all her claims against the United States, as reimbursement for the loss of her personal effects which were destroyed when the Government quarters she was occupying at Napakiak, Alaska, burned to the ground on January 13, 1950.

### STATEMENT

Records of the Department of the Interior disclose that the fire causing this damage was apparently caused by spontaneous combustion due to overheating of the light plant which was located in a small room in the rear of the quarters occupied by claimant. Investigation of the causes for the fire failed to indicate any negligence or wrongful act or omission on the claimant's part or on the part of any employees

of the Department of Interior; consequently, the claim could not be paid under the provisions of the Federal Tort Claims Act (28 U. S. C. 2672) permitting administrative adjustment of claims. That Department further advises that no insurance was carried by Miss McDougall due to the prohibitive insurance rates in effect in this isolated area.

The committee is in agreement with the Department of the Interior that this claim be favorably considered and, therefore, recommends favorable consideration of H. R. 3366, as amended.

Attached hereto and made a part hereof is the report submitted by the Department of the Interior on the instant bill and an itemized list of the property destroyed by the fire.

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DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
*Washington 25, D. C., January 19, 1955.*

Hon. SAM RAYBURN,
*Speaker of the House of Representatives,*
*Washington 25, D. C.*

MY DEAR MR. SPEAKER: Enclosed is a draft of a proposed bill for the relief of Mary J. McDougall.

I suggest that the proposed bill be referred to the appropriate committee for consideration, and I recommend that it be enacted.

The bill would authorize the payment to Mary J. McDougall the sum of $631.99 to reimburse her for the loss of her personal effects which were destroyed when the Government quarters which she was occupying at Napakiak, Alaska, burned to the ground on January 13, 1950. No insurance was carried by Miss McDougall due to the prohibitive insurance rates in effect in this isolated area. There is enclosed an itemized list of the property destroyed by the fire, showing the original cost of the property and its depreciated value.

The fire was apparently caused by spontaneous combustion due to overheating of the light plant which was located in a small room in the rear of the quarters. Investigation of the causes for the fire failed to indicate any negligence or wrongful act or omission on the claimant's part or on the part of any employee of the Department; therefore, the claim could not be paid under the provisions of the Federal Tort Claims Act (28 U. S. C. 2672) permitting administrative adjustment of claims. It is, therefore, recommended that favorable consideration be given to this proposed bill for the relief of Mary J. McDougall.

The Bureau of the Budget has advised that there is no objection to the presentation of this proposed bill to the Congress.

Sincerely yours,

D. OTIS BEASLEY,
*Administrative Assistant Secretary of the Interior.*

*Personal effects lost by Mary J. McDougall, ANS teacher, Napakiak, Alaska, in fire at teacher's quarters, Napakiak, Jan. 13, 1950*

| Approximate date purchased | Articles | Quantity | Approximate unit cost | Present value |
|---|---|---|---|---|
| May 1948 | Boots, fancy calf | 1 pair | $12.50 | $11.25 |
| Dec. 5, 1949 | Boots, calf, short | do | 7.00 | 6.50 |
| Apr. 30, 1949 | Boots, knee-high rubber | do | 3.79 | 3.00 |
| April 1949 | Bedspread, tufted | 1 | 5.29 | 5.00 |
| Apr. 26, 1949 | Coat, wool broadcloth | 1 | 40.00 | 40.00 |
| August 1948 | Coat, wool, summer weight | 1 | 25.00 | 25.00 |
| July 1948 | Coat, shortie | 1 | 12.50 | 11.25 |
| April 1949 | Corselet (new) | 1 | 4.98 | 4.98 |
| Apr. 30, 1949 | do | 2 | 3.98 | 7.96 |
| Jan. 5, 1950 | Dolls, Eskimo | 10 pair | 5.00 | 50.00 |
| Apr. 30, 1949 | Dress, spun rayon | 1 | 4.98 | 4.98 |
| Apr. 26, 1949 | do | 1 | 4.98 | 4.98 |
| July 1948 | Dress, rayon | 1 | 6.98 | 5.00 |
| June 1949 | do | 1 | 6.98 | 6.98 |
| September 1943 | Eyeglasses, gold rims | 1 pair | 14.00 | 14.00 |
| May 1949 | Eyeglasses, shell | do | 18.00 | 18.00 |
| July 1949 | Glasses, rimless | do | 18.00 | 18.00 |
| 1947 | Gun, .22, single-shot | 1 | 10.00 | 9.00 |
| September 1949 | Pen and pencil set | 1 set | 12.50 | 12.50 |
| April 1948 | Sheets, cotton (new) | 4 | 3.69 | 14.76 |
| September 1948 | Shoes, suede (new) | 1 pair | 5.00 | 5.00 |
| Apr. 30, 1949 | Shoes, leather (new) | do | 5.00 | 5.00 |
| Do | Slippers (new) | do | 2.98 | 2.98 |
| June 1949 | Slip, silk | 1 | 6.00 | 6.00 |
| July 1948 | Suit, gabardine | 1 | 35.00 | 35.00 |
| September 1948 | Suit, summer weight | 1 | 10.00 | 10.00 |
| Apr. 30, 1949 | Sweater, nylon | 1 | 4.79 | 4.79 |
| June 1949 | Sweater, wool | 1 | 7.00 | 7.00 |
| 1936 | Picture, framed, Mount McKinley by Sidney Lawrence (reproduced). | 1 | 6.00 | 6.00 |
| 1937–40 | Yearbooks, Western Washington College of Education, Bellingham, Wash. | 4 | 3.50 | 14.00 |
| March 1942 | Receiver, radio, Setchel Carlson, battery or electric, mahogany-finish cabinet. | 1 | 100.00 | 85.00 |
| May 3, 1949 | Butter in brine | 40 pounds | .75 | 30.00 |
| Do | Bisquick | 1 case | 7.25 | 7.25 |
| Do | Candy, Skiddo mix | 12 pounds | .27½ | 3.30 |
| Do | Cabbage, Happy Home | 1 case | 4.80 | 4.80 |
| Do | Cereal, Kellogg, assorted | do | 2.66 | 2.66 |
| Do | Chicken, whole, cooked | 2 cans | 1.89 | 3.78 |
| Do | Crackers, soda | 1 case | 2.52 | 2.52 |
| Do | Crackers, Graham | do | 2.64 | 2.64 |
| Do | Crackerjack | ½ case | 3.68 | 1.84 |
| Do | Crabmeat | 18 cans | .53 | 9.54 |
| Do | Coffee, Gold Shield | 21 cans | .51 | 10.71 |
| Do | Eggs, processed | ½ case | 18.60 | 9.30 |
| Do | Grapejuice | 6 quarts | .20 | 1.20 |
| Do | Apricots, H. & H. | 15 cans | .25 | 3.75 |
| Do | Blackberries | 12 cans | .20 | 2.40 |
| Do | Applesauce | 15 cans | .18 | 2.70 |
| Do | Pineapple | do | .32 | 4.80 |
| Do | Preserves, Valamont | 21 cans | .38 | 7.98 |
| Do | Tomatoes | 20 cans | .20 | 4.00 |
| Do | Sauerkraut | 1 case | 2.45 | 2.45 |
| Do | Spinach | do | 3.35 | 3.35 |
| Do | Shrimp | 20 cans | .33 | 6.60 |
| Do | Mushrooms | 22 cans | .19 | 4.18 |
| Do | Mayonnaise | 1 case | 4.15 | 4.15 |
| Do | MOR veal | do | 10.30 | 10.30 |
| Do | Brown sugar | do | 2.62 | 2.62 |
| Do | Olives, ripe | 20 cans | .26 | 5.20 |
| Do | Rice | 15 pounds | .12 | 1.86 |
| Do | Nuts, mixed in shell | 5 pounds | .37 | 1.85 |
| Do | Onions | ½ case | 12.50 | 6.25 |
| Do | Flour, Drifted Snow (50-pound sacks) | 3 sacks | 3.72 | 11.16 |
| Oct. 6, 1949 | Potatoes | ½ case | 6.00 | 3.00 |
| | Total | | | 631.99 |

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